

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 28. STATE REAL ESTATE DEPARTMENT

PREAMBLE

1. Sections Affected

R4-28-101
R4-28-102
R4-28-103
Table 1
R4-28-301
R4-28-302
R4-28-303
R4-28-304
R4-28-305
R4-28-306
R4-28-401
R4-28-402
R4-28-404
R4-28-502
R4-28-803
Article 10
R4-28-1001
R4-28-1101
R4-28-1103
R4-28-A1215
R4-28-B1210
R4-28-1303
R4-28-1310

Rulemaking Action:

Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
New Section
Amend
Amend
Amend
Amend
Amend
Amend
Repeal
Repeal
Amend
Amend
Amend
Amend
Amend
Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 32-2107(E) and 41-1001(10)

Implementing statutes: A.R.S. §§ 32-2108, 32-2122 through 32-2128; 32-2130 through 32-2132(A)(10); 32-2134 through 32-2136; 32-2151 and 32-2151.01; 32-2153 through 32-2155; 32-2157 through 32-2159; 32-2161; 32-2171 through 32-2175; 32-2181 and 32-2181.01; 32-2183.01(E) and 32-2184; 32-2194.02, 32-2194.05, 32-2194.10; 32-2195.01, 32-2195.02, and 32-2195.05(E); 32-2197(2), 32-2197.07, 32-2197.17(E) and (J), 32-2197.23, 32-2198.09, and 32-2198.10.

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 10 A.A.R. 1032, March 19, 2004

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Cindy Wilkinson, Rules Liaison
Address: Department of Real Estate
2910 N. 44 St., 1st Floor
Phoenix, AZ 85018
Telephone: (602) 468-1414, Ext. 120

Notices of Proposed Rulemaking

Fax: (602) 468-0562

E-mail: cwilkinson@re.state.az.us

5. An explanation of the rule, including the agency's reasons for initiating the rulemaking:

This rulemaking results primarily from the Arizona Department of Real Estate's ("Department") Five-Year Rule Review of Articles 1, 3, 5, 10, 11 and 13 (Title 4, Chapter 28, A.A.C.) approved by the Governor's Regulatory Review Council (G.R.R.C.) on May 4, 2004. As a prelude to the Five-Year Review, the Department encouraged regulated parties to participate in stakeholder committees and meetings held between June and November 2003. Some stakeholder groups continue to meet and engage in an ongoing dialog concerning the regulation of real estate-related industries subject to Department jurisdiction under A.R.S. Title 32, Chapter 20.

R4-28-101 is amended to define commonly used terms such as active license and non-resident, to remove terms no longer used, and to modify others.

Non-substantive changes are made to R4-28-102 to improve understanding, and procedures for applicants under license time-frames are clarified in R4-28-103.

Licensing fees authorized under A.R.S. § 32-2132 are exempt from the provisions of Title 41, Chapter 6 (including rulemaking), pursuant to A.R.S. § 41-1005 (A) (16). License fees currently included in R4-28-104 are repealed.

Table 1. The periods for review are adjusted to accommodate the continuing increase in volume of applications for the various types of licenses issued and limitations of available resources, and so that designated broker and entity applications can be processed concurrently. Associate broker applications remain with the same processing time as salesperson applications. Because the time required for review of a distance learning course greatly exceeds the time required for reviewing a live-instruction class, the distinction is made and a longer time period is established for distance learning courses.

R4-28-301 is amended to clarify disclosure and documentation of background information required from licensees and license applicants, including disclosure and documentation of any payment made by a recovery fund or other fund of last resort as a result of actions by the licensee or applicant, or a civil judgment finding fraud or dishonest dealings. The modification to subsection (F) clarifies that specified events that occur after licensure must be reported, including convictions, adverse judgments or orders, or disciplinary action against professional or occupational licenses.

R4-28-302 is amended to eliminate the requirement that a designated broker's statement be notarized; to move (H)(1) and subsection (I) to R4-28-1103, Broker Supervision and Control; to repeal (H)(2), which had been repeated at R4-28-303 (E)(3); and to insert text from R4-28-1001, Fictitious Names, which is being repealed, as new text at subsections (H) and (I). Subsection (L) is changed to clarify that it applies to designated and employing brokers but does not apply to associate brokers.

R4-28-303 has been amended to require a designated broker to submit a Broker Supervision and Control Audit Declaration on behalf of the entity or sole proprietorship for which the broker is responsible as a condition of license renewal. Subsection (C) pertaining to unlicensed activity is stricken and adopted as a new Section, R4-28-306. Former subsection (E), license changes, is rewritten for clarity based on comments received from stakeholders and staff; former subsection (F) is amended to limit membership of a professional corporation or professional limited liability company licensed as a designated broker. Non-substantive changes have been made for clarity, and subsections have been renumbered as needed.

R4-28-304 and R4-28-305 are amended for clarity.

Education rules R4-28-401 and R4-28-402 are amended to add the Disclosure and Business Broker categories of course content. Some provisions are rewritten to improve understanding and to specify what information is required on an education certification issued by a real estate school, pursuant to A.R.S. § 32-2135(B). Section R4-28-404 is amended to clarify that course applications are to correspond with the content categories prescribed in R4-28-402 and to eliminate the requirement that a school demonstrate current standing with the Arizona Corporation Commission.

The advertising rules are amended for clarity based on suggestions from stakeholders. Changes to R4-28-502 clarify which parties are responsible for school advertising and require that real estate advertisements include the prominent display of the employing broker's name. Former subsection (K) is stricken as unnecessary. An agent who advertises another agent's listed property is required to prominently display the listing agent's name in the ad. Subsection (L) is amended to address electronic solicitations for real estate brokerage services for property located in Arizona. A correction is made to a statutory cite in R4-28-503.

R4-28-803 is amended to make changes to required contract disclosures to comport with changes being made to R4-28-B1210, concerning a developer's placement of earnest money and other advance deposits.

Stakeholders and the Department's Rulemaking Advisory Committee recommended minor changes to R4-28-1101 and R4-28-1103. Changes to R4-28-1101 clarify what disclosures must be made to a party to a transaction, clarify that a salesperson or broker is not deemed to jeopardize a transaction by refusing to modify terms of compensation or employment, improve understanding of the standard of care expected of salespersons and brokers, and clarify that

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licensees must respond to Department inquiries. R4-28-1103 is amended to clarify that a broker is required to review, approve and inspect advertising; and the relocated provisions of R4-28-302 (H)(1) and (I)(1) and (2) are inserted as new text. The amendment also requires that brokers immediately report their discovery of unprofessional conduct by a salesperson or associate broker in the employ of their employing broker.

R4-28-A1215 is amended to comport with the change to R4-28-B1210, which requires purchasers' earnest deposits and down payments to be deposited in neutral escrow or broker trust account, rather than being paid to the developer before the transaction closes. Advanced monies for upgrades or alterations may still be paid directly to the developer.

Following the Auditor General's recommendation in its 2002 Sunset Review of the Department and based on current practice, R4-28-1303 is amended to ensure confidentiality of ongoing investigations and availability of completed investigations subject to the established record retention schedule and redaction of information made confidential by law.

A non-substantive change is made to R4-28-1310.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

Persons Directly Affected By, Bear the Costs of, or Directly Benefit From the Proposed Rulemaking

This rulemaking amends various rules due to changes in the law (2004 Session Laws Chapter 100, 46th Legislature, Second Regular Session), input from stakeholders to make more clear licensees' obligations under the rules, to repeal an article which has been made redundant, to comport with current practice, and to clarify the meaning of rules as determined in the Department's Five-Year Rule Review approved by G.R.R.C. May 4, 2004. Provisions in this rulemaking directly affect real estate, cemetery, and membership camping brokers and salespersons, developers and the consuming public. Developers will bear the brunt of costs relating to some changes; brokers and salespeople will directly benefit from clearer rules; homebuyers will directly benefit.

Cost/Benefit Analysis

Probable costs and benefits to the Department and other Agencies directly affected by the proposed rulemaking:

The goal for all of these changes is to achieve greater understanding and thus, better protections for consumers in real estate transactions involving real estate agents and developers and for real estate licensees or candidates taking or preparing to take accredited classes. These regulated parties will better understand the rules and thus can more easily comply, and the Department will experience improved regulation and enforcement of the rules. Most of the changes in this rulemaking are non-substantive.

Brokers will better understand what is required of them for licensure and license renewal, in advertising, as standards for determining professional conduct, and when disclosures must be made and what supporting documentation must be submitted. Brokers and salespersons who specialize in brokering businesses and wish to obtain the newly-authorized specialty designation will know what is expected of them to attain and retain it. Prospective clients and customers can readily identify those licensees who have met the additional requirements and demonstrated their knowledge of the acquisition and sale of businesses. Costs to licensees because of the adjustment to the license time-frames will result if it takes the Department longer to review and process applications.

School operators will have specific content guidelines to seek approval of disclosure and business brokerage courses. Distance learning course providers will know up front that review of a distance-learning course takes longer than review of a live course.

Home sellers, buyers, lessors and lessees will be affected indirectly when they conduct business with regulated parties who understand what is required of them. They will benefit directly from the added protections included in this rulemaking; customers' funds will be more broadly safeguarded. Developers will bear the cost of added consumer protection measures because they will not be permitted to use customers' money to pay for the development and improvements to the development.

Probable costs and benefits to a political subdivision of Arizona directly affected by the proposed rulemaking:

None.

Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:

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Most of the changes in this rulemaking are non-substantive and will not result in additional costs or benefits to businesses.

Designated brokers (DB) will be directly affected by the change to the license time-frame, but because the DB is inextricably tied to the employing brokerage (the business), the applications need to be processed concurrently. Processing a designated broker's application within a time-frame different than that of the brokerage for which the broker is responsible serves no purpose, since neither can be "active" without the other.

Developers will be directly and adversely affected by the adjustment to public report time-frames, however the number of applications continues to rise and Department resources are static or decreasing due to budget constraints.

Brokerages that specialize in businesses have the opportunity to benefit from the creation in statute (§§ 32-2124 and 32-2130) of a business broker specialty designation. The voluntary designation requires additional education and passing examinations on the initial course(s). If the licensee determines that the cachet (and anticipated increase of business) of having the voluntary designation does not favorably offset the cost of the classes, he or she is under no obligation to renew the designation.

Under the proposed change to R4-28-B1210, developers' costs may increase. Developers of regulated developments (subdivisions, unsubdivided land projects, time-shares) will no longer be permitted access to buyers' money before the transaction closes except under specified conditions. Developers must place buyers' money into neutral escrow account or broker's trust account until the development and improvements are complete and the developer conveys the property to the buyer. The rules currently permit a developer, with the acknowledgement of the buyer, to use the buyer's earnest deposit or down payment to help with the developer's cash flow: i.e., as payment for various expenses and overhead. A developer who currently uses this as a method of operating will have to find another source or sources to replace the buyers' funds that are no longer available until closing. However, the rule will allow advanced money for optional items, alterations or upgrades for which a buyer contracts, and will permit phased construction draws as construction proceeds, to be available for the developer's immediate use, provided that the conditions for refund are stated in the contract.

In the Department's experience, the proposed change will affect few of the small developers, and the degree of impact will depend on the number and size of developments currently being developed by any developer. For example, a developer with a 100-lot subdivision might require an average of \$10,000 down upon execution of the purchase contract. If all of the buyers of the 100 lots stipulate that the deposit can be paid directly to and immediately available to the developer, under the current rules that developer has \$1,000,000 of the buyers' money with which to pay salaries and benefits, buy supplies, pay loans, etc. Large-scale developers may have several developments scattered throughout the state, so the impact may be compounded.

General Description of the Probable Impact on Private and Public Employment in Businesses, Agencies and Political Subdivisions of this State directly affected by the Proposed Rulemaking:

Most of the changes proposed are not substantive and do not impose an additional burden on regulated parties. There may be a negative impact on developers as they shift costs for staff, overhead, development and improvement costs from customer deposits and advance monies to cash reserves, loans, or make other financial arrangements for these expenses.

A Statement Of The Probable Impact Of The Proposed Rulemaking On Small Businesses:

- a) Identification of the small businesses subject to the proposed rulemaking:

The amendments relating to earnest deposits are the only changes expected to impact small businesses, and then only if it normally contracted to take immediate control of the buyer's earnest money and deposits. A developer will still be permitted to contract to take immediate control of advanced money for optional upgrade items or alterations, or for phased construction draws. If the buyer cancels the purchase, the contract may provide that the developer retain the amount for those charges.

- b) Administrative and Other Costs Required for Compliance with the Proposed Rulemaking:

Certain costs are associated with obtaining alternative sources for deposits otherwise available to the developer, such as interest and lender fees.

- c) A description of the methods that the agency may use to reduce the impact on small businesses. These methods may include:

The Department considered establishing less costly compliance, less costly schedules or less stringent deadlines for compliance, or exempting small businesses from any or all requirements in the proposed rulemaking, however to promote protection of the home buying public, those options were rejected. The economic impact will be scaled for small businesses, however because the amount of money for which alternate sources must be found is based on the number of homes built and sold.

- d) The Probable Cost and Benefit to Private Persons and Consumers who are Directly Affected by the Proposed Rulemaking.

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Although it is possible that developers may pass on slight increases of the cost of the home to purchasers, purchasers will not face the risk of losing their money if the developer fails to complete construction of the development overall and the purchaser's lot in particular. It is an unacceptable risk that purchasers would lose thousands or tens of thousands of dollars, or more, if the developer building their dream home suddenly experienced a financial downturn, filed for bankruptcy, or simply disappeared.

The Probable Effect on State Revenues

None is expected.

A Description of any Less Intrusive or Less Costly Alternative Methods of Achieving the Purpose of the Proposed Rulemaking:

Limitations on Data

There are no hard and fast numbers on how many developers require buyers to release earnest deposits to them as a condition of sale, nor how much of how many buyers' money a developer has at any given time.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Cindy Wilkinson, Rules Liaison
Address: Department of Real Estate
2910 N. 44 Street, 1st Floor
Phoenix, AZ 85018
Telephone: (602) 468-1414, Ext. 120
Fax: (602) 468-0562
E-mail: cwilkinson@re.state.az.us

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

An oral proceeding will be held Wednesday, September 15, 2004, beginning at 9:00 a.m. to hear comments concerning the proposed rulemaking. The proceeding will be held in the Administration Division Conference Room, Arizona Department of Real Estate, 2910 N. 44 Street, Phoenix, AZ 85018. Written comments submitted by mail or by e-mail and received no later than 4:00 p.m., Wednesday, September 15, 2004, will also be considered. Please see item #4 for contact information.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

N/A

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 28. STATE REAL ESTATE DEPARTMENT

ARTICLE 1. GENERAL PROVISIONS

Section	
R4-28-101.	Definitions
R4-28-102.	Document Filing; Computation of Time
R4-28-103.	Licensing Time-frames
R4-28-104.	Fees
Table 1.	Time-frames

ARTICLE 3. LICENSURE

Section	
R4-28-301.	General License Requirements; <u>Non-resident License</u>
R4-28-302.	Employing or Designated Broker's License; Non-resident <u>Non-resident</u> Broker
R4-28-303.	License Renewal; Reinstatement; License Changes
R4-28-304.	Branch Office; Branch Office Manager
R4-28-305.	Temporary License; Certificate of Convenience

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R4-28-306. Unlawful License Activity

ARTICLE 4. EDUCATION

Section

R4-28-401. Prelicensure Education Requirements; Waiver; Business Brokerage Designation

R4-28-402. Continuing Education Requirements; Waiver; Distance Learning

R4-28-404. Real Estate School Requirements, Course and Instructor Approval

ARTICLE 5. ADVERTISING

Section

R4-28-502. Advertising by a Licensee

R4-28-503. Promotional Activities

ARTICLE 8. DOCUMENTS

Section

R4-28-803. Contract Disclosures

~~ARTICLE 10. FRANCHISES AND FICTITIOUS NAMES~~ REPEALED

~~Section~~

~~R4-28-1001. Fictitious Names Repealed~~

ARTICLE 11. PROFESSIONAL CONDUCT

Section

R4-28-1101. Duties to Client

R4-28-1103. Broker Supervision and Control

ARTICLE 12. DEVELOPMENTS

PART A. APPLICATION FOR PUBLIC REPORT, CERTIFICATE OF AUTHORITY, OR SPECIAL ORDER OF EXEMPTION

Section

R4-28-A1215. Development Sales

PART B. GENERAL INFORMATION

Section

R4-28-B1210. Earnest Money

ARTICLE 13. ADMINISTRATIVE PROCEDURES

Section

R4-28-1303. Information Obtained in an Investigation

R4-28-1310. Rehearing or Review of Decision; Response; Decision

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 28. STATE REAL ESTATE DEPARTMENT

ARTICLE 1. GENERAL PROVISIONS

R4-28-101. Definitions

In addition to the definitions listed in A.R.S. § 32-2101 the following terms apply to this Chapter:

“Active license” or “active status” means a broker or salesperson with a current license for whom the applicable documentation and fee have been submitted to the Department for the broker or salesperson to be employed by an employing broker. If referring to an employing broker, one who holds a current license and has a currently licensed designated broker of record.

“ADEQ” No change

“Advanced Money” or “advanced monies” means funds paid before closing for optional or additional items, alterations or phased draws for construction.

“ADWR” No change

“Closing” No change

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"Credit hour" No change

"Course" No change

"D.b.a." or "dba" means 'doing business as-' and is a name other than a person's legal name authorized for use in conducting business.

"Distance learning course" means a course of instruction outside a traditional classroom situation consisting of computer-based interactive instructional material, such as computer-based or audio-visual, requiring completion in the course credit hours specified. A course that requires a student to read text, listen to audio tapes, or view video material without student participation, feedback, and remedial instruction is not a distance learning course.

~~"Fictitious name" means any name used to conduct business other than a person's legal name, and includes a d.b.a. name or trade name.~~

~~"Franchise" means a contract or agreement, either express or implied, oral or written, between two or more persons by which:~~

~~A franchisee is granted the right to engage in the business of offering, selling, and distributing goods or services under a marketing plan or system prescribed in substantial part by a franchiser; and~~

~~The operation of the franchisee's business pursuant to the plan or system is substantially associated with the franchiser's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchiser or its affiliate; and~~

~~The franchisee is required to pay, directly or indirectly, a franchise fee.~~

"Immediate family" No change

"Individual" No change

"Material change" No change

"Non-resident license" means a license authorized under the provisions of 32-2122(A) issued to a person who has been domiciled in this state for less than one year and who does not possess or meet any of the following:

a. An Arizona driver's license;

b. Arizona motor vehicle registration;

c. Employment history in Arizona;

d. Arizona voter registration;

e. Transfer of banking services to Arizona;

f. Change of permanent address on all pertinent records;

g. Domestic corporation or limited liability company;

h. Filed an Arizona income tax return with the department of revenue during the previous tax year; or

i. Received benefits from any Arizona public service department or agency, such as welfare, food stamps, unemployment, or worker's compensation.

"Property interest" No change

R4-28-102. Document Filing; Computation of Time

A. No change

B. In computing any period of time allowed by these rules or by an order of the Commissioner, the day of the act, event, ~~and~~ or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday. ~~When~~ Unless specified as calendar days, when the period of time allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

R4-28-103. Licensing Time-frames

A. No change

B. Administrative completeness review.

1. No change

2. No change

3. If the applicant fails to submit the missing information before expiration of the completion request period, the Department shall close the file, unless the applicant requests an extension in writing before expiration of the completion request period and the extension is granted. An applicant whose file has been closed may obtain a license by submitting a new application.

C. Substantive review. The substantive review time-frame established in Table 1 begins after the application is administratively complete.

1. No change

2. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date the Department mails the request until the information is received by the Department. If the applicant fails to provide the information identified in the written request the

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Department shall consider the application withdrawn unless the applicant requests an extension in writing before expiration of the additional information period, and an extension is granted by the Commissioner by a written request.

3. No change

D. Renewals. If an applicant for renewal of a salesperson's or broker's license submits a complete renewal application:

1. No change

2. After the expiration date, or if a substantive review is required because the applicant wishes to make changes to or has answered in the affirmative ~~to~~ any question on the license questionnaire, the Department shall process the application as a modified or amended application.

R4-28-104. Fees Development Inspection Fee

~~A.~~ Licensing Fees:

1. ~~Broker's exam and examination application, \$115.00;~~
2. ~~Broker's license, \$125.00;~~
3. ~~Broker's renewal, \$125.00;~~
4. ~~Broker's late renewal pursuant to A.R.S. § 32-2130(C), additional \$20.00 per month fee up to a maximum of \$120;~~
5. ~~Salesperson's exam and examination application fee, \$90.00;~~
6. ~~Salesperson's license, \$60.00;~~
7. ~~Salesperson's renewal, \$60.00;~~
8. ~~Salesperson's late renewal pursuant to A.R.S. § 32-2130(C), additional \$10.00 per month fee up to a maximum of \$60;~~
9. ~~Branch office license,~~
 - a. ~~12 months or less, \$35.00;~~
 - b. ~~13 to 24 months, \$50.00;~~
 - c. ~~Renewal, \$50.00;~~
10. ~~Change of name or address, \$10.00;~~
11. ~~Temporary broker's license, \$50.00;~~
12. ~~Temporary cemetery salesperson's license, \$50.00;~~
13. ~~Membership camping salesperson's certificate of convenience, \$50.00.~~

~~B.~~ Development fees:

1. ~~Public Report, \$500.00;~~
~~Subdivision public report, amended, \$250.00;~~
~~Unsubdivided land public report, amended, \$500.00;~~
~~Membership camping public report~~
~~amended/renewal, \$300.00;~~
~~Timeshare Exemption, \$300.00;~~
2. ~~Time share public report (per interval, maximum \$1,000), \$20.00;~~
3. ~~Membership camping lottery or drawing application, \$250.00;~~
4. ~~Cemetery Certification, \$500.00;~~
~~Cemetery Amendment, \$500.00;~~
5. ~~Conditional Sales Exemption, \$100.00;~~
6. ~~Special Order of Exemption, \$100.00.~~

~~C.~~ No change

Arizona Administrative Register / Secretary of State

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Table 1. Time-frames (Calendar Days)

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Review	Response to Additional Information	Overall Time-frame
Original Associate Broker and/or Salesperson (Individual)	A.R.S. § 32-2122 A.A.C. R4-28-301	15	15	45	30	60
Renewal (without change)	A.A.C. R4-28-302 A.R.S. § 32-2130	15 15	15 15	45 45	30 30	45 60
Modified/Amended	A.A.C. R4-28-303	15	15	45	30	60
Reinstatement	A.R.S. § 32-2131 A.A.C. R4-28-303	<u>15</u>	<u>15</u>	<u>45</u>	<u>30</u>	<u>60</u>
Original Designated Broker, Corp/LLC/Partnership/PC/PLC	A.R.S. § 32-2125	30	30	0	0	30
Renewal (without change)	A.A.C. R4-28-301	30	30	90	60	120
Modified/Amended	A.A.C. R4-28-303	30	30	90	60	120
Reinstatement	A.A.C. R4-28-302	30	30	90	60	120
Temporary Broker	A.R.S. § 32-2133	30	30	90	60	120
Temp Cemetery Salesperson	A.R.S. § 32-2134	30	30	90	60	120
Membership Camping Cert. of Convenience	A.R.S. § 32-2134.01	30	30	90	60	120
Branch Office	A.A.C. R4-28-305 A.R.S. § 32-2127	15 30	15 30	45 90	30 60	60 120
School Approval	A.R.S. § 32-2135(A) A.A.C. R4-28-404	10	15	20	15	30
Course Approval: New (Live Instruction) New (Distance Learning)	A.R.S. § 32-2135 A.A.C. R4-28-404 A.A.C. R4-28-402	10 <u>30</u>	15 <u>30</u>	20 <u>90</u>	15 <u>30</u>	30 <u>120</u>
Instructor Approval	A.R.S. § 32-2135 A.A.C. R4-28-404	10	15	20	15	30
ADVERTISING Membership Campground (only for lottery or drawing)	A.R.S. § 32-2198.10(D) A.R.S. § 32-2198.14 A.A.C. R4-28-503(D)	15	5	0	0	15
Subdivision (only for drawing or contest)	A.R.S. § 32-2183.01(I) A.A.C. R4-28-503(D)	15	5	0	0	15
Time-Share (only for drawing or contest)	A.R.S. § 32-2197.11(I) 32-2197.17(I) A.A.C. R4-28-503(D)	15	5	0	0	15
Time-Share (the offer of a premium)	A.R.S. § 32-2197.11(K) 32-2197.17(K) A.A.C. R4-28-503(D)	15	5	0	0	15
Development Application	A.R.S. § 32-2183(A) A.R.S. § 32-2195.03(A) A.R.S. § 32-2197.06 A.R.S. § 32-2198.02 A.A.C. R4-28-B1203	20 40	20	50 100	20	70 140
Amended Report	A.R.S. § 32-2184 A.R.S. § 32-2195.10 A.R.S. § 32-2197.03 A.R.S. § 32-2198.01(D) A.A.C. R4-28-B1203	10 30	10	10 30	10	20 60
Certificate of Authority Amended Certificate	A.R.S. § 32-2194.03(A) A.R.S. § 32-2194.10 A.A.C. R4-28-B1204	20 40 10 30	20 10	50 100 10 30	20 10	70 140 20 60
WAIVERS Pre-license	A.R.S. § 32-2124 A.A.C. R4-28-401	15	60	30	0	45
Continuing Education	A.R.S. § 32-2130 A.R.S. R4-28-402	5	10	7	0	12

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EXEMPTIONS	A.R.S. § 2181.01	20 <u>40</u>	20	20 <u>40</u>	20	40 <u>80</u>
Subdivision	A.A.C. R4-28-B1202					
Unsubdivided Land	A.R.S. § 32-2195.01	20 <u>40</u>	20	20 <u>40</u>	20	40 <u>80</u>
	A.A.C. R4-28-B1202					
Time-Share	A.R.S. § 32-2197.13	20 <u>40</u>	20	20 <u>40</u>	20	40 <u>80</u>
Membership Camping	A.R.S. § 32-3198.03	20 <u>40</u>	20	20 <u>40</u>	20	40 <u>80</u>

ARTICLE 3. LICENSURE

R4-28-301. General License Requirements: Non-resident License

- A.** An applicant for or holder of any Department-issued license, renewal, or amended license, including, if an entity, any officer, director, member, manager, partner, owner, trust beneficiary holding 10% or more beneficial interest, stockholder owning 10% or more stock, or other person exercising control of the entity, shall submit the following information:
1. A signed certification questionnaire disclosing any:
 - a. No change
 - b. No change
 - c. No change
 - d. Order, judgment, or decree permanently or temporarily enjoining the applicant from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, time-share intervals, membership camping contracts, campgrounds, securities, or involving consumer fraud or the racketeering laws, or payment due to the applicant's action or inaction from a recovery fund or fund of last resort.
 2. If any response to subsection (A)(1) is answered in the affirmative, the applicant shall provide all of the following written documentation for each applicant answering in the affirmative:
 - a. A signed written statement describing in detail the circumstances surrounding the matter disclosed.
 - ~~a-b.~~ No change
 - ~~b-c.~~ Three written references from individuals, 18 years or older and not related by blood or marriage to the applicant, who have known the applicant for at least 1 year before the date of receipt of the application. Each dated reference shall be less than one year old and include the writer's name, address and telephone number;
 - ~~c-d.~~ A 10-year work history, reflecting stating the employer's name and address, supervisor's name and telephone number, position held, and dates of employment, including any periods of unemployment;
 - ~~d-e.~~ A certified copy of any document, such as the findings of fact, conclusions of law, reprimand, censure or sanction, an or order assessing a civil penalty or denying, suspending, restricting or revoking any professional or occupational license held or previously held by the applicant within the last 10 years;
 - ~~e-f.~~ No change
 - ~~f-g.~~ No change
 - ~~g-h.~~ No change
 - ~~h-i.~~ No change
 3. No change
 4. No change
 5. No change
- B.** In addition to the information required in subsection (A), any person applying for a salesperson's or broker's license shall meet the qualifications listed in A.R.S. § 32-2124, A.A.C. R4-28-401, and R4-28-403, and, if disclosing censure, sanction, disciplinary action or order against any professional or occupational license currently or previously held by the applicant, shall submit a certified license history from each state in which the applicant holds, or has held, a professional or occupational license within the 5 years preceding the application.
- C.** The Department shall not issue a broker's license to any person who is holds an actively licensed salesperson active salesperson's license in this state, until the An active-status salesperson applying for broker's license may simultaneously submit a severance signed is severed by the designated broker on behalf of the salesperson's employing broker as prescribed I R4-28-303 (D)(2)(j) or is may request to be administratively severed as prescribed in R4-28-303(E)(4) or (F)(G).
- D.** Only The Department shall issue to a qualified person a license bearing the legal name of the licensee and any additional nickname, corporate, or fictitious dba name that the Commissioner finds is not detrimental to the public interest shall be placed on a license certificate. A professional corporation or professional limited liability company licensed pursuant to A.R.S. § 32-2125(B) shall not adopt a dba name.
- E.** No change
- F.** Except as prescribed in A.R.S. §§ 32-2184, 32-2194.10, 32-2195.10, 32-2197.03 and 32-2198.01(D), every licensee Each salesperson, broker, school owner, director, administrator and instructor shall, within 10 days of each occurrence, notify the Commissioner, in writing, of any change in information contained in the license certification questionnaire specified in provided pursuant to subsection (A)(1)(a) through (d) and provide documentation pursuant to (A)(2).

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G. A licensee shall, within 14 calendar days or such later date as directed, respond to a request from the commissioner or the commissioner's representative for any documents, electronic files, written statements or other information required as a part of a complaint investigation. This requirement applies to any licensee who has or may have such information, regardless of whether the licensee is named in the complaint.

H. A licensee shall disclose any unlawful licensed activity by the licensee, as described in R4-28-306, within 10 days of becoming aware of its occurrence.

R4-28-302. Employing or Designated Broker's License; Non-resident Broker

A. Any person applying for an employing or designated broker's license shall provide the following information:

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change

B. Partnership.

1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
2. In addition to the information provided in subsection (A), the partnership broker applicant shall, if applicable, provide:
 - a. No change
 - b. No change
 - c. ~~An affidavit~~ A written statement signed by the designated broker stating that:
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - d. No change
 - e. No change
 - f. No change

C. Corporation. In addition to the information provided in subsection (A), a corporate broker applicant shall provide:

1. No change
2. No change
3. No change
4. ~~An affidavit~~ A written statement signed by the designated broker stating that:
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
5. No change

D. Limited liability company. In addition to the information provided in subsection (A), a limited liability company broker applicant shall provide:

1. No change
2. No change
3. No change
4. ~~An affidavit~~ A written statement signed by the designated broker stating that:
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
5. No change
6. No change

E. No change

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1. The agreement and plan of merger;
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
 7. No change
- F. No change
- G. No change
- H. ~~The designated broker shall:~~
1. ~~Be responsible for supervising the associate brokers, salespersons and employees of the employing broker within the course of their employment;~~
 2. ~~Notify the Department on the Change Form within 10 days after a salesperson or broker leaves a broker's employment. An employing broker shall not have or use a name similar to that of any broker already authorized that would cause uncertainty or confusion. If there is a conflict of names between two brokers, the Commissioner shall require the broker seeking authorization to supplement or modify the broker's name.~~
- I. ~~The employing broker shall be responsible for:~~
1. ~~The acts of all associate brokers, salespersons, and other employees acting within the course of their employment; and~~
 2. ~~Supervising the associate brokers, salespersons, and employees of the employing broker within the course of their employment.~~
- A person shall not be licensed as an employing broker under more than one dba name, and shall not conduct or promote a brokerage business unless the person uses the name under which the person or brokerage is licensed, except that a broker authorized to conduct business as a franchisee may use both the approved franchise name and the broker's licensed name.
- J. No change
- K. No change
1. No change
 2. No change
 - a. No change
 - b. No change
 - c. No change
 3. No change
- L. ~~Nonresident~~ Non-resident designated or employing broker.
1. ~~If a A designated or employing broker that holds a non-resident license and licensed nonresident broker maintains a principal office outside Arizona, the broker shall:~~
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 2. ~~If a A designated or employing broker that holds a licensed nonresident non-resident license broker and employs a licensed salesperson or broker within the state, the broker shall:~~
 - a. No change
 - b. No change
 3. ~~A nonresident designated or employing broker holding a non-resident license broker shall notify the Department within 10 days if of any change to any information required under this Section changes.~~

R4-28-303. License Renewal; Reinstatement; License Changes

- A. Renewal.
1. No change
 - a. No change
 - b. No change
 2. Any salesperson or broker applying for a license renewal shall submit the following information on the Application for License Renewal form:
 - a. No change
 - b. No change
 - c. ~~The If the renewal is for an active license, the application shall bear the date and signature of the designated broker, or authorized branch office manager, or authorized designee under 32-2127(D). if the renewal is for an active license. If the renewal is signed by the authorized representative, The branch manager or designee shall attach a copy of the authorization shall be attached.~~

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- d. No change
- e. A completed certification questionnaire, providing details and supporting documents for any affirmative response not previously disclosed in writing to the Department concerning judgments, orders, professional licenses, or convictions, as required by R4-28-301(A);
- f. To renew as a designated broker a broker shall complete and submit a signed Broker Supervision & Control Audit Declaration on behalf of the sole proprietorship, corporation, partnership, or limited liability company on whose behalf the broker acts as designated broker. The completed declaration shall:
 - i. Be dated and filed with the Department no more than 90 days before the broker's license expiration date;
 - ii. Be in the form prescribed by the Department;
 - iii. State the broker's compliance or non-compliance with, or the non-applicability of, specified statutes and rules; and
 - iv. Identify all of the broker's property management and trust accounts.
- B.** Late renewal. In addition to the information required in subsection (A), any person applying for a late renewal shall specify whether the person conducted unlawful license activities as described in R4-28-306 requiring a license were conducted after license expiration or without proper employment by a broker.
- ~~**C.**~~ **Unlicensed activity.** ~~A person who has conducted activities requiring a current and active license while not properly licensed shall, upon request, submit:~~
 - 1. ~~A copy of any offer or contract to sell, lease, exchange, transfer, or manage real estate, cemetery property, or membership camping contracts;~~
 - 2. ~~A written explanation of why the unlicensed activity occurred, attesting that there are no unreported transactions;~~
 - 3. ~~A copy of all listing agreements, buyer broker employment agreements, purchase contracts, escrow settlement statements, management agreements, rental agreements, and leases executed while not properly licensed;~~
 - 4. ~~Documentation listing all compensation received or to be received by the applicant, the designated broker, and the employing broker, resulting from the applicant's activities;~~
 - 5. ~~The person shall attest that activities requiring a license shall not be conducted until a current and active license is issued to the person.~~
- ~~**D.C.**~~ **No change**
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
 - 2. No change
- ~~**E.D.**~~ **License Changes.** A salesperson or broker shall notify the Commissioner of the following information and changes:
 - 1. In writing or on a Change Form, whichever is appropriate:
 - a. The type of change being made;
 - b. The legal name, address, and telephone number of the salesperson or broker;
 - c. The prior name of the person, if changing name;
 - d. The prior address of the main or branch office, if changing address;
 - e. The salesperson's or broker's license number, expiration month, and year; and
 - f. The date of the application and signature of the salesperson or broker.
 - 2. In writing, within 10 days of the change:
 - a. Personal name, including proof of the change;
 - b. Personal address;
 - c. Opening, closing, or relocation of a broker's trust account;
 - d. A branch office closing; or
 - e. Disclosure of certification information.
 - 3. On a Change Form, within 10 days of the change:
 - a. Active to inactive status;
 - i. The legal name and fictitious name, if any, of the severing broker; and
 - ii. The date and signature of the severing broker.
 - b. The employing broker's business address;
 - c. The business mailing address, if different than the business address;
 - d. A transfer between employer's offices by a salesperson or associate broker;

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- e. The appointment of temporary broker due to a designated broker's death or incapacity; or
 - f. Branch office manager.
4. ~~On a Change Form, and obtain approval from the Commissioner before conducting business. The existing license remains in effect until the application has been approved or denied.~~
- a. ~~The broker's business name;~~
 - b. ~~The employing broker, including:~~
 - i. ~~The legal name and fictitious name, if any, of the severing and hiring brokers; and~~
 - ii. ~~The date and signatures of the severing and hiring brokers.~~
 - e. ~~Inactive to active status;~~
 - i. ~~The legal name of the hiring broker; and~~
 - ii. ~~The date and signature of the hiring broker.~~
 - d. ~~Designated broker by an entity;~~
 - e. ~~Adopting, changing, or relinquishing professional corporation or professional limited liability company license status;~~
 - f. ~~Membership of a professional corporation or professional limited liability company, or the license status of a member;~~
 - g. ~~Broker change of status to or from associate broker;~~
 - h. ~~Designated broker or entity change from resident to nonresident broker's license; or~~
 - i. ~~Designated broker or entity change from nonresident to resident broker's license.~~
5. ~~Within 30 days of any change in structure of the licensed entity, the name of any:~~
- a. ~~Director, officer, or person holding, or controlling 10% or more of the shares, if a corporation;~~
 - b. ~~Partner if a partnership; or~~
 - e. ~~Member or manager if a limited liability company.~~
6. ~~If a previously issued license is not returned when making a license change, the salesperson or broker or the designated broker, if applicable, shall submit a written statement explaining why the previous license is not being returned.~~
1. Each salesperson and broker shall notify the Department in writing within 10 days of any change in the individual's personal information or qualifications. The notice shall include the individual's signature, name, and either date of birth or license number to particularly identify the individual and include:
- a. If disclosing information required under Section R4-28-301, such as a criminal conviction, adverse judgment, denial or restriction of or disciplinary action against a professional or occupational license, or recovery fund payment on the person's behalf, a written statement providing detailed information and, upon request by the Department, supporting documentation identified in R4-28-301(A)(2);
 - b. If requesting a change of personal name, written notice stating the prior name and new name, supporting documentation for the change and applicable fee;
 - c. If changing residence address or residential mailing address, including changing between resident and-non-resident licensure, written notice stating the prior address and new address;
 - d. If changing residence telephone number or providing additional telephone numbers or email address, written notice of the prior and current number, numbers or email address;
 - e. If adopting, modifying or relinquishing licensure under a professional corporation or professional limited liability company, the information required under Section R4-28-303 (F);
2. Each designated broker shall notify the Department in writing within 10 days of any change in the employing broker's qualifications, and shall provide notice of any proposed change in the employing broker's business information. An employing broker may not conduct business under information described in subsections (D)(1)(b), (c), (f), (g), (i), (l) and (m) until the change has been approved by the Department. Each notice shall include the designated broker's name and signature and the employing broker's legal name to particularly identify the brokerage and include:
- a. If disclosing information required under Section R4-28-301 such as an adverse judgment, denial or restriction of or disciplinary action against a professional or occupational license, or recovery fund payment on the person's behalf or on the behalf of any person who owns 10% or more or exercises control of the employing broker, written statement within 10 days of the occurrence, providing detailed information and, upon request by the Department, supporting documentation identified in R4-28-301 (A)(2);
 - b. If changing the employing broker's legal name, written notice stating the current name and proposed name, supporting documentation and applicable fee;
 - c. If changing the employing broker's dba name, written notice stating the current dba name, if any, the proposed dba name, and applicable fee;
 - d. If changing the employing broker's physical address, changing or adding a business mailing address, or changing the address of any branch office, written notice within 10 days of the change stating the prior address and new address, returning licenses outstanding to the former address and applicable fee;
 - e. If changing business telephone number, written notice within 10 days of the change, providing the prior and current number. The broker may provide additional telephone numbers or email address;

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- f. If changing the structure or membership of the employing broker as provided in A.R.S. 32-2125 (G), written notice within 10 days of the change including supporting documentation identified in R4-28-302;
- g. If changing branch office managers at an established branch office, or changing the authority delegated to the manager, the application form, applicable fee and letter of authority that identifies the person appointed and specifying the duties delegated as provided by R4-28-304;
- h. If closing a branch office, a written statement within 10 days of the closure informing the Department, accompanied by the branch office license and a change form severing the employment of or transferring to another branch office all employees at the branch when closed;
- i. If hiring a salesperson or broker, or transferring a salesperson or broker employed by the employing broker to another office of the employing broker, a change form which also includes the signature of the employee, the name and license number of the employee and the office address at which the employee will work;
- j. If severing a licensee employed by the employing broker, a completed change form and return the license;
- k. If opening or closing a broker's trust account, written notice within 10 days of the opening or closing and providing the name of the account, the account number, the name of the bank and the address of the bank where the account is located. If relocating or changing the name of a trust account, the information shall include the information for the previous and new accounts;
- l. If appointing a temporary broker, the information specified in R4-28-305 and in accordance with provisions of 32-2127 or 32-2133, as applicable; or
- m. If changing designated brokers, the information and documentation as provided in R4-28-302 (K).

~~F.F.~~ In addition to the information required in subsection ~~(E)(1)~~ (D)(1), a real estate salesperson or associate broker shall submit the following information when the change is in a:

- 1. Professional corporation.
 - a. The name of the professional corporation ~~which that~~ includes the full or last name of each officer, director, and shareholder of the professional corporation as it appears in the Articles of Incorporation. If the professional corporation is licensed as designated broker, membership in the professional corporation is limited to the designated broker and shall include no other person;
 - b. No change
 - c. No change
 - i. No change
 - ii. No change
- 2. Professional limited liability company.
 - a. The name of the professional limited liability company ~~which that~~ includes the full or last name of each member of the professional limited liability company as it appears in the Articles of Organization. If the professional limited liability company is licensed as designated broker, membership in the professional limited liability company is limited to the designated broker and shall include no other person;
 - b. No change
 - c. No change
 - i. No change
 - ii. No change
 - d. No change

~~G.F.~~ Administrative severance.

- 1. A salesperson or broker may request that the Department immediately sever the salesperson's or broker's license from the employing broker.
 - a. After notifying the designated broker, the salesperson, or broker shall provide the following information on a Request for Administrative Severance form or in the manner prescribed by the Department:
 - i. No change
 - ii. No change
 - iii. The name of the employing broker from whom the license is being severed, and
 - iv. ~~The reason why the applicant seeks administrative severance, and;~~
 - v. The date and signature of the applicant.
 - b. No change
 - c. After receipt of the severance form, the Department shall administratively sever the license and ~~mail a copy of the severance to provide written notice to~~ the employing broker.
- 2. No change

R4-28-304. Branch Office; Branch Office Manager

- A. The designated broker shall submit the following information for each branch office on the Application for Branch Office form:
 - 1. No change

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2. No change
 3. No change
 4. No change
 5. The employing broker's ~~fictitious~~ dba name, if applicable;
 6. No change
 7. No change
- B. Branch office manager. ~~An~~ A designated broker may authorize in writing an associate broker or salesperson; ~~to act acting~~ as a branch office manager, ~~may~~ to perform any of the following duties of the designated broker at the branch office ~~if authorized in writing by the designated broker~~. This designation does not relieve the designated broker from any responsibilities. Upon change of the branch manager, the designated broker shall submit a new authorization to the Department within 10 days of the change and shall retain a copy in the broker's main office for 5 years.
1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 2. No change
 - a. No change
 - b. No change
- C. Temporary office. An additional license is not required for a temporary office established for the original onsite sale of properties within the immediate area of a subdivision or unsubdivided land.
1. No change
 2. The broker shall display the subdivision or unsubdivided land name ~~with~~ and the licensed name of the employing broker in a ~~conspicuous prominent~~ manner.

R4-28-305. Temporary License, Certificate of Convenience

- A. Any individual applying for a temporary cemetery salesperson's license, a temporary broker's license, or a membership camping salesperson's certificate of convenience shall submit the following information and applicable fee to the Department:
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
- B. The designated broker shall submit an affidavit pursuant to A.R.S. § 32-2134 or 32-2134.01 for:
1. ~~A~~ An applicant for temporary cemetery license stating that the applicant has been trained in cemetery and contract law; or
 2. ~~A~~ An applicant for a membership camping certificate of convenience stating that the applicant will be trained in membership camping and contract laws.
- C. No change
1. No change
 2. No change

R4-28-306. Unlawful License Activity

- A. The performance of acts requiring a license as provided by § A.R.S. 32-2122 by a person who does not hold a current and active license, or who performed on behalf of a broker other than the broker to whom a person is licensed, or a broker's employment of such a person constitutes unlawful license activity.**
- B. A person who has conducted unlawful license activity pursuant to this Section shall submit:**
1. A written explanation of why the unlawful license activity occurred;
 2. A signed statement that the person will not conduct activities requiring licensure pursuant to § 32-2122 unless the person holds a current and active license to perform those acts;
 3. A signed statement from the person's designated broker identifying all unlawful activity by the person conducted on behalf of the employing broker;
 4. Upon request:
 - a. A copy of any offer or contract to sell, lease, exchange, transfer, or manage real estate, cemetery property, or membership camping contracts prepared or negotiated by the person while not properly licensed and a signed

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statement attesting that there are no unreported transactions:

- b. A copy of all listing agreements, buyer-broker employment agreements, purchase contracts, escrow settlement statements, management agreements, rental agreements, and leases executed by the person while not properly licensed and a signed statement attesting that there are no unreported agreements and contracts:
- c. Documentation listing all compensation received or to be received by the person based on transactions that occurred while the person was not properly licensed;
- d. Documentation listing all compensation received or to be received by the person's designated and employing brokers, if any, resulting from transactions that occurred while the person was not properly licensed if not already provided in response to subsection (B)(3)(c).

C. A person who has no prior history of engaging in unlawful license activity pursuant to this Section and who conducted business as a salesperson or broker, or a broker who employed a salesperson or broker not properly licensed, for not more than 30 days against whom there are no pending complaints may submit applicable forms and fees to renew the person's license and for license change to active-status. The processing of the application will not be delayed based on the unlawful licensed activity. The Department shall issue an Advisory Letter of Concern to the person.

D. A person who has engaged in unlawful license activity pursuant to this Section for longer than 30 days, has previously conducted unlawful license activity, or is the subject of a pending complaint is subject to disciplinary action under § 32-2153.

ARTICLE 4. EDUCATION

R4-28-401. Prelicensure Education Requirements; Waiver; Business Brokerage Designation

- A. No change
 - 1. No change
 - 2. No change
- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - b. No change
- C. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - b. No change
 - c. No change

D. No change

E. No change

F. The Department shall award the business brokerage designation to a real estate salesperson or broker or an applicant for licensure as a real estate salesperson or broker who submits to the Department satisfactory proof that the licensee or applicant completed 24 credit hours of Department-approved education on business brokerage, including passing an examination on each course. The education shall comprise no less than two 12-hour courses or three 8-hour courses and shall include instruction on business brokerage practices, review and analysis of financial statements, including recasting, and business valuation. A course of less than eight credit hours is not applicable towards the education requirement to attain the designation.

R4-28-402. Continuing Education Requirements; Waiver; Distance Learning

- A. Continuing education requirements.
 - 1. Any individual applying for real estate license renewal shall complete 24 credit hours in the following categories from a real estate school that meets the requirements in R4-28-404, of which a minimum of 3 hours are completed in each of the first 5 categories: Prior to applying for license renewal, a real estate salesperson or broker shall complete

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continuing education courses approved for credit by the Department and presented by a certified real estate school taken since the salesperson's or broker's original licensure or preceding renewal, whichever is later.

2. A real estate salesperson or associate broker shall submit proof of satisfactory completion of 24 credit hours of continuing education courses except when renewing with a business brokerage designation as provided in subsection (4). This continuing education shall include courses approved in the mandatory categories as prescribed in subsection (6). The renewal applicant may take additional courses in the mandatory categories described in subsection (6)(a) through (6)(f), or in the business brokerage or general real estate categories described in subsection (6)(g) and (6)(h) to fulfill the required 24 credit hours.
3. A real estate designated broker shall submit proof of satisfactory completion of 24 credit hours of continuing education courses except when renewing with a business brokerage designation as provided in subsection (4). This continuing education shall include courses approved in the mandatory categories as prescribed in subsection (6) and shall include a Broker Management Clinic approved in the Commissioner's Standards category. The renewal applicant may take additional courses in the mandatory categories described in subsection (6)(a) through (6)(f), or in the business brokerage or general real estate categories described in subsection (6)(g) and (6)(h) to fulfill the required 24 credit hours.
4. A real estate salesperson or broker with the business brokerage designation seeking to renew licensure with that designation shall submit to the Department satisfactory proof that the licensee has completed 30 credit hours of Department-approved continuing education. The education shall include the eighteen mandatory credit hours prescribed in subsection (2) for salespersons and associate brokers or subsection (3) for designated brokers, and an additional 12 credit hours in the business brokerage category prescribed in subsection (6)(g). A course of less than six credit hours shall not be applicable toward renewal of the business brokerage designation. A licensee who has earned the business brokerage designation and is renewing with the designation for the first time shall also demonstrate successful completion of an approved examination(s) on the business brokerage course(s).
5. A salesperson renewing for the first time may include credit for attendance at the Contract Writing class taken pursuant to 32-2124 (L) if taken within one year before the date of the salesperson's original licensure, and a broker renewing for the first time may include credit for attendance at the Broker Management Clinic even though it may have been taken before the broker's original licensure date pursuant to 32-2136.
6. Each real estate salesperson and broker must successfully complete three credit hours each in the categories of agency law, contract law, commissioner's standards, real estate legal issues, fair housing and disclosure. Classes and required content include:
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - vii. No change
 - c. No change
 - i. No change
 - ii. No change
 - iii. No change
 - d. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - vii. No change
 - viii. No change
 - ix. No change
 - x. No change
 - xi. No change
 - e. No change
 - i. No change
 - ii. No change
 - iii. No change

Notices of Proposed Rulemaking

- iv. No change
- v. No change
- f. Disclosure. The majority of class material concerns the following:
 - i. Licensee's disclosure obligations to client and others;
 - ii. Seller's and buyer's disclosure obligations to each other;
 - iii. Common material facts warranting disclosure, and liability for failure to disclose;
 - iv. Avoiding inadvertent non-disclosures;
 - v. What transaction documents should be reviewed;
 - vi. Common "red flags" in a real estate transaction;
 - vii. Homeowner associations, buyers and their obligations; and
 - viii. Advising buyers and sellers of common "red flags".
- g. Business brokerage. The majority of class material concerns business brokerage including:
 - i. Business brokerage basics including introducing licensees to business brokerage, associated terminology, marketing, prospecting, listing, pricing, closing practices, and the use of contracts related to and unique to business brokerage and the application of such contracts;
 - ii. Business valuations and appraisals, and establishing an in-depth review of proper business valuation techniques for small, medium and large businesses;
 - iii. Tax structure and considerations, tax law and policy including subjects such as financing tools available, options available and tax implications;
 - iv. Accounting for business brokers;
 - v. Agency in business brokerages and the use of contracts related to and unique to business brokerage and the application of such contracts; and
 - vi. Disclosure, focused on business brokerage, including common "red flags" in a business opportunity transaction; and advising buyers and sellers of common "red flags".
- h. General real estate. The majority of class material concerns real estate, but does not fall within any of the classifications categories listed in subsections (A)(1)(a) through (A)(1)(e); (A)(6)(a) through (A)(6)(g), including:
 - i. Appraisal methodology;
 - ii. General finance, use of financial calculators, math classes, and managing cash flow;
 - iii. History of development in metropolitan areas; and
 - iv. Introduction to property management.

~~2-7.~~ No change

~~3-8.~~ The Department may grant continuing ~~Continuing~~ education credit may be granted for an a previously-unapproved course if the applicant demonstrates to the satisfaction of the Commissioner that the course meets both the requirements prescribed in R4-28-404 and the course content requirements of this Section.

~~4-9.~~ The equivalent subject matter hours within a 90-hour broker's precensure course, if ~~taken~~ completed since the last license renewal, may be substituted for ~~the 24 hours of~~ continuing education credit required in subsection (A)(~~1~~)(2), (3) or (4).

~~5-10.~~ If any change in the continuing education course requirements ~~falls within~~ occurs during a renewal applicant's license period but after the applicant has fully complied with the continuing education requirement in effect when the change occurs, the renewal applicant may fulfill the continuing education requirements for that renewal period by satisfying the requirements that were in effect at the beginning ~~or the end~~ of the renewal applicant's license period.

B. No change

- 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change

2. No change

C. No change

D. Distance learning.

1. ~~The Department shall approve a distance learning course before credit is issued.~~

2. Only a school holding a Certificate of Approval shall offer a distance learning course and shall obtain course approval before offering or presenting the course for credit.

~~3-2.~~ No change

- a. No change
- b. No change
- c. No change
- d. No change

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- i. No change
 - ii. No change
 - e. No change
 - i. No change
 - ii. No change
- 3. No change
 - a. No change
 - b. No change
 - c. No change
 - i. No change
 - ii. No change
 - iii. No change

- 4. No change

E. Each certificate for real estate credit that a school issues to a real estate licensee for successfully completing an approved course shall include the school name, course title and number, number and category of credit hours awarded, the starting date of the course and ending date if different than the starting date.

R4-28-404. Real Estate School Requirements, Course and Instructor Approval

A. Certificate of School Approval. Except for a community college or university accredited by the Council on Post Secondary Accreditation or the U.S. Department of Education offering courses in real estate, any school offering a course of study for original or renewal licensure of a real estate applicant shall apply for and possess a Certificate of School Approval from the Department. The school's authorized representative shall provide the following information on or with the Certificate of School Approval form:

- 1. No change
- 2. No change
- 3. No change
- 4. No change
- 5. No change
- 6. No change
- 7. No change
 - a. No change
 - b. No change
 - c. No change

- 8. No change

9. If the owner is a corporation or limited liability company, a copy of:

- a. A corporate or company resolution or operating agreement naming the officer, member, or manager authorized to execute the Certificate of Approval form;
- b. ~~A current Certificate of Good Standing from the Arizona Corporation Commission;~~
- e. The latest annual report on file with the Arizona Corporation Commission; and
- ~~d-c.~~ The Articles of Incorporation or Organization, as amended.

- 10. No change

B. Certificate of Course Approval. Any school offering a course of study for original or renewal licensure of a real estate applicant shall apply for and possess a Certificate of Course Approval for each course offered by the school. The school's authorized representative shall submit the following information:

- 1. No change
- 2. No change
- 3. No change
- 4. A detailed outline of course material content that clearly lists the course objective(s) and subject matter to be covered;
- 5. No change
- 6. No change
- 7. The category of under which the school is seeking course approval requested, which shall correspond with the categories prescribed in R4-28-402 (A)(6).
- 8. No change
- 9. No change
- 10. The name of every approved instructor who will teach the course; and
- 11. No change

C. Instructor approval. Any person ~~wishing seeking approval~~ to teach an approved real estate course shall apply for an instructors approval on a form prescribed by the Department, and shall have at least one of the following qualifications in the ~~proposed~~ subject ~~area~~ areas the applicant proposes to teach:

1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
 7. Other education or experience determined by the Commissioner to qualify the applicant as an instructor to teach the subject matter for which approval is sought.
- D.** No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
- E.** No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
- F.** No change
1. No change
 2. No change
 - a. No change
 - b. No change
 - c. No change
- G.** No change
- H.** No change
1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 2. No change
 - a. No change
 - b. No change
 - c. No change
 3. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 4. No change

ARTICLE 5. ADVERTISING

R4-28-502. Advertising by a Licensee

- A.** No change
- B.** Any salesperson or broker advertising the salesperson's or broker's own property for sale, lease, or exchange shall disclose the salesperson's or broker's status as a salesperson or broker, and as the property owner by placing the words 'owner/agent' in the advertisement.
- C.** A salesperson or broker shall ensure that all advertising contains accurate claims and representations, and fully states factual material relating to the information advertised. A salesperson or broker shall not misrepresent the facts or create misleading impressions.
- D.** ~~Any~~ A school shall include its name, address and telephone in all advertising of Department approved courses ~~shall include the school name, address, and telephone number.~~ The school owner, director, or administrator shall supervise all

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advertising and the school owner is responsible for all of the school's advertising.

- E. A licensee shall ensure that ~~All~~ all advertising ~~shall include identifies~~ identifies in a clear and prominent manner ~~either the name in which the employing broker's legal name license is held or the fictitious dba name contained on the license certificate.~~ either the name in which the employing broker's legal name license is held or the fictitious dba name contained on the license certificate. The lettering used for the name of the employing broker shall appear in a clear and conspicuous manner.
- F. A licensee who advertises property that is the subject of another person's real estate employment agreement shall display the name of the listing broker in a clear and prominent manner.
- ~~F.G.~~ The designated broker ~~or the school owner~~ shall supervise all advertising for real estate, cemetery, or membership camping brokerage services, as applicable pursuant to 32-2122.
- ~~G.H.~~ No change
- ~~H.I.~~ No change
- ~~I.J.~~ The provisions of subsections (E) and (F) ~~(G)~~ shall not apply to advertising done by any franchisor or franchisee if the advertising does not refer to specific real estate.
- ~~J.K.~~ No change
1. No change
 2. No change
- ~~K.~~ A real estate salesperson or broker may use the terms "team" or "group" to advertise and promote real estate services if those terms do not constitute the use of a trade or d.b.a. name, and all of the following are true:
1. The team or group is comprised of real estate salespersons or brokers;
 2. The team or group members are employed by the same employing broker;
 3. The designated broker maintains and files with the Department a current list of all members of each group or team in the broker's employ, and
 4. The advertising otherwise complies with statutes and rules.
- L. The use of electronic media, such as the Internet or web site technology, which targets Arizona residents with the offering of a property interest or real estate brokerage services pertaining to property located in Arizona constitutes the dissemination of advertising as defined in A.R.S. § 32-2101(2).

R4-28-503. Promotional Activities

- A. No change
- B. No change
- C. No change
- D. A subdivider, time-share developer, or membership camping operator may apply for approval to conduct a lottery, contest, drawing, or game of chance by submitting to the Department, the information required in A.R.S. §§ 32-2183.01(I), ~~32-2197.11(F)~~ 32-2197.17 (J) or 32-2198.10(D), the applicable fee, if any, and:
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change

ARTICLE 8. DOCUMENTS

R4-28-803. Contract Disclosures

- A. Any agreement or contract for the sale or lease of a property interest in a development that requires a public report shall contain substantially the following language in bold print or print larger than the other print used in the document above the signature portion of the document:
THE PURCHASER SHALL BE GIVEN A COPY OF THE PUBLIC REPORT AND AN OPPORTUNITY TO READ AND REVIEW IT BEFORE SIGNING THIS DOCUMENT.
- B. No change
- C. The contract shall ~~indicate~~ include the name of the escrow company licensed to do business in Arizona or the name of the Arizona broker's trust account and state where the earnest money or down payment, if any, will be deposited ~~and shall include the name of the title company the name of the broker's trust account, or other depository.~~
- D. Any agreement or contract for the sale or lease of a property interest in a development where ~~a down payment, earnest money deposit, or other~~ advanced money, if any, as provided by R4-28-B1210, is paid directly to the seller and not placed in a neutral escrow depository; shall conspicuously disclose this fact within the document, and the purchaser shall sign or initial this provision indicating approval in the space adjacent to or directly below the disclosure in the purchase contract or agreement of sale. The following disclosure shall be written in large or bold print and shall be included in the public report, purchase contract, and agreement of sale.
Prospective purchasers are advised that ~~earnest money deposits, down payments, and other~~ the specified advanced money for additional or optional items, alterations or phased construction draws will not be placed in a neutral escrow.

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This money will be paid directly to the seller and may be used by the seller. This means the purchaser assumes a risk of losing the money if the seller is unable or unwilling to perform under the terms of the purchase contract and may not be entitled to a refund.

ARTICLE 10. FRANCHISES AND FICTITIOUS NAMES REPEALED

R4-28-1001. Fictitious Names Repealed

- A.** A broker shall not have or use a name similar to that of any broker already authorized that would cause uncertainty or confusion. If there is a conflict of names between 2 brokers, the Commissioner shall require the broker to supplement or modify the broker's name.
- B.** A person shall not be licensed as a broker under more than 1 fictitious name, and a person shall not conduct or promote a brokerage business unless the person uses the name under which the person or brokerage is licensed, except that a broker authorized to conduct business as a franchisee may use both the approved franchise name and the broker's fictitious name as licensed.
- C.** A professional corporation or professional limited liability company licensed pursuant to A.R.S. § 32-2125(B) shall not adopt a fictitious name.

ARTICLE 11. PROFESSIONAL CONDUCT

R4-28-1101. Duties to Client

- A.** No change
- B.** A licensee participating in a real estate transaction shall disclose in writing to all other parties any information which the licensee possesses that materially ~~and or~~ adversely affects the consideration to be paid by any party to the transaction, including:
 - 1. Any information that the seller or lessor is or may be unable to perform;
 - 2. Any information that the buyer or lessee is, or may be, unable to perform;
 - 3. Any material defect existing in the property being transferred; and
 - 4. The ~~possible~~ existence of a lien or encumbrance on the property being transferred.
- C.** A licensee shall expeditiously perform all acts ~~resulting from an agreement authorized~~ required by the holding of a license. Any delay in performance, either intentional or through neglect, is prohibited.
- D.** A licensee shall not allow a controversy with another licensee to jeopardize, delay, or interfere with the initiation, processing, or finalizing of a transaction on behalf of a client. This prohibition does not obligate a licensee to agree to alter the terms of any employment or compensation agreement or to relinquish the right to maintain an action to resolve any such controversy.
- E.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- F.** No change
- G.** No change
- H.** No change
- I.** A salesperson or broker shall exercise reasonable care in ensuring that information material to a client's interests and relevant to the contemplated transaction is obtained and accurately communicated to the client. A salesperson or broker is not required to have expertise in subject areas other than those required to obtain the salesperson's or broker's license. A salesperson or broker shall take reasonable steps to assist a client in confirming or verifying information under circumstances in which a reasonably prudent agent has reason to question the accuracy of the information, or when the client has questioned the accuracy of the information.
- J.** No change
 - 1. No change
 - 2. No change
- K.** A salesperson or broker shall recommend to a client that the client seek appropriate counsel from insurance, legal, tax and accounting professionals regarding the risks of pre-possession or post-possession of a property.
- L.** A licensee participating in a residential resale transaction of property on which the dwelling is less than twenty years old shall disclose in writing to the prospective purchaser that a public report may be available by contacting a title company, county recorder, or the Department.

R4-28-1103. Broker Supervision and Control

- A.** An employing broker and a designated broker shall exercise reasonable supervision and control over the activities of brokers, salespersons, and others in the employ of the broker. Reasonable supervision and control includes the establishment and enforcement of written policies, rules, procedures, and systems to:

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1. No change
 - a. No change
 - b. No change
 2. No change
 - a. No change
 - b. No change
 - c. No change
 3. No change
 4. No change
 5. Review and inspect:
 - a. ~~Documents~~ documents that may have a material effect upon the rights or obligations of a party to a transaction; and
 - b. ~~Advertising~~ 6. Review and inspect prior to approving advertising and marketing by the broker and by salespersons, brokers, and others in the broker's employ.
- B.** A broker shall establish a system for monitoring compliance with laws, rules and with the broker's policies, rules, procedures, and systems. ~~A broker may use the services of employees to assist in administering the provisions of this Section but shall not relinquish overall responsibility for supervision and control of the acts of employees of the broker.~~
- C.** The designated broker is responsible for supervising the associate brokers, salespersons and employees of the employing broker within the scope of their employment.
- D.** The employing broker is responsible for:
 1. The acts of associate brokers, salespersons, and other employees acting within the scope of their employment; and
 2. Supervising the associate brokers, salespersons, and employees of the employing broker within the scope of their employment.
- E.** A broker may use the services of employees to assist in administering the provisions of this Section but shall not relinquish overall responsibility for supervision and control of the acts of employees of the broker.
- F.** A designated broker who discovers or is made aware of any conduct by a salesperson or associate broker licensed under the designated broker's employing broker that is or is believed to be in violation of real estate statutes or rules shall immediately report the information to the Department. The designated broker shall include in the notification to the Department the action taken to address the issue. Fulfilling this requirement relieves the designated broker from responsibility for the conduct reported that is found to be in violation of real estate statutes or rules.

ARTICLE 12. DEVELOPMENTS

PART A. APPLICATION FOR PUBLIC REPORT, CERTIFICATE OF AUTHORITY,
OR SPECIAL ORDER OF EXEMPTION

R4-28-A1215. Development Sales

The applicant shall provide a description of the sales offering and:

1. No change
2. No change
3. Indicate where the purchaser's deposit and earnest monies and other advanced moneys, if any, will be deposited and held;
4. ~~If the deposit advanced~~ monies are available for use by the seller, when and under what conditions the monies will be released-refunded;
5. No change
6. No change
7. No change
8. No change
 - a. No change
 - b. No change
 - c. No change
9. No change
10. No change
11. No change
12. No change

PART B. GENERAL INFORMATION

R4-28-B1210. Earnest Money

- A.** Except as provided in subsection (B), a ~~The~~ developer shall deposit earnest money and down payments in a neutral depository ~~if:~~

Notices of Proposed Rulemaking

1. ~~The seller is in bankruptcy;~~
2. ~~The sale is conditional pursuant to R4-28-G1202; or~~
3. ~~The Department perceives a risk to the buyer.~~

B. Advanced money may be delivered directly to the developer pursuant to R4-28-803 (D).

ARTICLE 13. ADMINISTRATIVE PROCEDURES

R4-28-1303. Information Obtained in an Investigation

The Department shall ensure that ~~any information or document obtained in an examination every open and ongoing audit or investigation remains confidential, unless made a matter of public record.~~ Officers and employees of the Department shall not make confidential information or documents available to anyone other than the Attorney General or the Attorney General's representative, or ~~a member, officer, or employee~~ authorized employees of the Department, unless the Commissioner authorizes disclosure of the information or production of documents as ~~not being contrary to~~ in the public interest. The Department shall disclose the existence of and make available for review closed audit and investigative files subject to redaction of confidential or privileged information consistent with the public records laws and established record retention schedules.

R4-28-1310. Rehearing or Review of Decision; Response; Decision

- A.** Unless otherwise provided by law or rule, any party to a hearing before the Department who is aggrieved by a decision rendered in a case may, pursuant to A.R.S. § 41-1092.09, file with the Commissioner a written motion for rehearing or review of the decision. The motion shall specify the particular grounds for rehearing or review. The moving party shall serve copies upon all other parties. A motion for rehearing or review under this Section may be amended at any time before ~~it is ruled upon by the Commissioner~~ rules upon the motion.
- B.** No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
 7. No change
 8. No change
- C.** No change
1. No change
 2. No change
 3. No change
- D.** No change
- E.** No change
- F.** No change

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION**

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| R9-22-706 | Repeal |
| R9-22-708 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
- Authorizing statute: A.R.S. §§ 36-2903 and 36-2903.01
- Implementing statute: A.R.S. §§ 36-2903.01(H), 36-2903.01(J), 36-2904(I), and 36-2908(C)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
- Notice of Rulemaking Docket Opening: 10 A.A.R. 1397, April 9, 2004
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- Name: Mariaelena Ugarte

Notices of Proposed Rulemaking

Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034

Telephone: (602) 417-4693

Fax: (602) 253-9115

Email: proposedrules@ahcccs.state.az.us

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The proposed rules were amended as result of a 5 Year-Rule Review, finding that clarification was needed in areas where the rule was outdated, and clarifying verbiage was necessary to explain how payments are made and to whom, for a Native American member.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

No studies were reviewed.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The preliminary summary of the economic, small business, and consumer impact:

AHCCCS anticipates minimal impact.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Mariaelena Ugarte

Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034

Telephone: (602) 417-4693

Fax: (602) 256-6756

E-mail: proposedrules@ahcccs.state.az.us

Proposed rule language will be available on the AHCCCS web site www.ahcccs.state.az.us the week of July 27, 2004. Please send written comments to the above address by 5:00 p.m., September 16, 2004. E-mail will be accepted.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: September 16, 2004

Time: 1:00 p.m.

Location: AHCCCS
701 East Jefferson
Phoenix, AZ 85034
Gold Room

Nature: Public Hearing

Date: September 16, 2004

Time: 1:00 p.m.

Location: ALTCS: Arizona Long-term Care System
110 South Church, Suite 1360
Tucson, AZ 85701

Nature: Public Hearing

Date: September 16, 2004

Time: 1:00 p.m.

Notices of Proposed Rulemaking

Location: ALTCS: Arizona Long-term Care System
3480 East Route 66
Flagstaff, AZ 86004

Nature: Public Hearing

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION**

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-706. Payments by the Administration for Services Provided to Eligible Persons Repealed

- ~~A.~~ Payment for emergency and medically necessary non-hospital outpatient services. The Administration shall make payments as defined in R9-22-710 for emergency and medically necessary non-hospital services provided to eligible persons.
- ~~1.~~ For dates of service on or before September 30, 1997, emergency services provided to the indigent, the medically needy, and eligible low-income children from the date of notification pursuant to R9-22-313 to the date of enrollment with a prepaid capitated contractor shall be paid at the capped fee-for-service rate or billed charges, whichever is lower. On the date of notification to the AHCCCS Administration, the county shall notify the AHCCCS Administration of the amount of medical expenses necessary to satisfy the spend down requirement of R9-22-321 and incurred by the household, if any, during the period of the Administration's retroactive liability.
- ~~2.~~ For dates of service on or before September 30, 1997, medically necessary services provided to categorically eligible persons and eligible assistance children from the effective date of eligibility to the date of enrollment with a prepaid capitated contractor shall be paid at the capped fee-for-service rate or billed charges, whichever is less.
- ~~B.~~ Indian Health Service. The Administration shall pay IHS the all-inclusive inpatient, outpatient, or ambulatory surgery rates published in the Federal Register for AHCCCS-covered services provided in IHS facilities. Except as provided in R9-22-708, IHS medical service referrals for eligible Native Americans made to off-reservation contractors, providers, noncontracting providers, or nonproviders shall be prior authorized.

R9-22-708. Payment for Services Provided to Eligible Native Americans Residing on Reservation

- ~~A.~~ Categorically eligible Native Americans may enroll with a contractor in accordance with Article 3 of these rules.
- ~~B.~~ Categorically eligible Native Americans who do not select an AHCCCS contractor and indigent and medically needy Native Americans shall be assigned in accordance with Article 3 of these rules.
- ~~C.~~ Providers and nonproviders shall comply with prior authorization requirements of the Administration, as set forth in Article 2 of these rules, and of contractors.
- ~~A.~~ For a Native American who is enrolled with IHS, AHCCCS shall pay IHS the all-inclusive inpatient, outpatient or ambulatory surgery rates published in the Federal Register, or a separately contracted rate, for AHCCCS-covered services provided in an IHS facility. A physician and mid-level practitioner that provides services to an AHCCCS eligible person, will be reimbursed the Medicare coinsurance and deductible amounts when the services are covered and paid by Medicare.
- ~~B.~~ IHS shall issue a referral for an eligible Native American person to an off-reservation provider, if the medically necessary services are not available from the IHS or a 638 provider. A 638 provider means a facility that is operated by an Indian tribe and is authorized to provide services under Public Law 93-638, as amended.
The provider to whom the referral is made shall request and receive prior authorization for those services requiring prior authorization.
- ~~D.~~ Contractors other than the Indian Health Service providing care to eligible Native Americans shall be reimbursed on a capitation basis. For a Native American person enrolled with a contractor, AHCCCS shall pay the contractor a monthly capitation payment.
- ~~E.~~ Once a Native American has enrolled with a contractor, no referral care rendered after the date of enrollment shall be reimbursable by a contractor unless the care is rendered pursuant to under a referral or prior authorization made by the

contractor of record.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 23. DEPARTMENT OF HEALTH SERVICES ORAL HEALTH

PREAMBLE

1. Sections Affected

R9-23-101
Article 2
R9-23-201
R9-23-202
R9-23-203
R9-23-204
R9-23-205
R9-23-301
R9-23-302
R9-23-303
R9-23-304
R9-23-305
R9-23-306
Article 4
R9-23-401
R9-23-402
R9-23-403

Rulemaking Action

Amend
New Article
New Section
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2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 36-132(A)(1), 36-136(A)(7) and 36-136(F)

Implementing statutes: A.R.S. §§ 36-104(1)(c) and 36-132(A)(10)

3. A list of previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 9 A.A.R. 4672, October 31, 2003

4. The name and address of the agency personnel with whom persons may communicate regarding the rulemaking:

Name: Tina Strickler
Acting Chief, Office of Oral Health

Address: Department of Health Services
1740 W. Adams St., Suite 203N
Phoenix, AZ 85007

Telephone: (602) 542-1866

Fax: (602) 542-2936

E-mail: strickt@hs.state.az.us

Or

Name: Kathleen Phillips, Rules Administrator

Address: Department of Health Services
1740 W. Adams St., Suite 202
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: kphilli@hs.state.az.us

5. An explanation of the rule, including the agency's reason for initiating the rule:

The purpose of this rulemaking is to address the issues identified in the five-year-review report submitted to the Governor's Regulatory Review Council (G.R.R.C.) in July 2001. The rules for oral health are in Title 9, Chapter 23, Article 1 and Article 3. In the proposed rules, the Department is amending Article 1 and 3 and adding two new Articles to the Chapter.

The Department is amending the definitions in Article 1 to reflect the changes made in the Chapter. The new Article 2 contains the eligibility requirements, the application process, and the application prioritization criteria for the Arizona Dental Sealant Program. The Department is amending Article 3 to include the eligibility requirements, the application process, and the application prioritization criteria for the Arizona Fluoride Mouthrinse Program. The new Article 4 contains the application process and the application prioritization criteria for the Arizona Dental Trailer Loan Program. The proposed rules will conform to current statutory authority, rulemaking format and style requirements, industry practice, and departmental policy.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and supporting material:

The Department did not review or rely on any study during this rulemaking.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

A.R.S. § 36-132(A)(10) requires the Department to encourage, administer and provide dental health care services to the public. The Department is currently providing dental health care services to the public through 3 programs: the Arizona Dental Sealant Program, the Arizona Fluoride Mouthrinse Program, and the Arizona Dental Trailer Loan Program.

During the 2002-2003 school year, the Department provided funding to 116 schools and approximately 7125 students received dental sealants. The Department also provided fluoride mouthrinse to 67 schools and approximately 25,000 students used the fluoride mouthrinse. And the Department has loaned 4 dental trailers to persons to use in on a temporary basis to provide dental health care services.

Annual cost/revenues are designated as minimal when less than \$1,500.00, moderate when between \$1,500.00 and \$10,000.00, and substantial when greater than \$10,000.00.

The proposed rules are consistent with the Department's current practices and are expected to have a minimal impact on any schools participating in the dental health care services programs provided by the Department, the public, and the Department. The proposed rules benefit any person receiving dental health care services from the Department by providing clarity in the eligibility and application requirements and ensuring that the Department processes applications in a fair, consistent, and timely manner. The amended rules conform to current statutory authority, rulemaking format and style requirements, industry practice, and departmental policy.

9. The name and address of the agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Tina Strickler
Acting Chief, Office of Oral Health

Address: Department of Health Services
1740 W. Adams St., Suite 203 N
Phoenix, AZ 85007

Telephone: (602) 542-1866

Fax: (602) 542-2936

E-mail: strickt@hs.state.az.us

Or

Name: Kathleen Phillips, Rules Administrator

Address: Department of Health Services
1740 W. Adams St., Suite 202
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

Notices of Proposed Rulemaking

E-mail: kphilli@hs.state.az.us

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

The Department has scheduled the following oral proceeding:

Date: September 16, 2004

Time: 10:00 a.m.

Location: Department of Health Services
1740 W. Adams St., Room 411
Phoenix, AZ 85007

A person may submit written comments on the proposed rules to either individual listed in items #4 and #9 until the close of record at 5:00 p.m., September 16, 2004. Persons with a disability may request reasonable accommodation by contacting Maria Herbert at mherber@hs.state.az.us or (602) 364-0912. Requests should be made as early as possible to allow sufficient time to arrange for the accommodation.

11. Any other matters prescribed by statute that are applicable to the specific agency or any specific rule or class of rules:

Not applicable

12. Incorporation by reference and their location in the rules:

The following is incorporated by reference in R9-23-101:

7 CFR 210.1(2003) incorporated by reference, on file with the Department and the Office of the Secretary of State, and including no future editions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.

13. The full text of the rules follows:

ARTICLE 1. DEFINITIONS

Section

R9-23-101. Definitions

**ARTICLE 2. ~~STANDARDS FOR THE PROVISION OF ORAL HEALTH SERVICES~~ ARIZONA DENTAL SEAL-
ANT PROGRAM**

Section

R9-23-201. Definitions

R9-23-202. Eligibility Requirements for Participation

R9-23-203. Application Process

R9-23-204. Prioritization of Applications

R9-23-205. Program Responsibilities

ARTICLE 3. ~~ORAL HEALTH SERVICES~~ ARIZONA FLUORIDE MOUTHRINSE PROGRAM

Section

R9-23-301. Definitions

R9-23-302. Eligibility Requirements for Participation

R9-23-303. Application Process

R9-23-304. Prioritization of Applications

R9-23-305. Program Responsibilities

R9-23-306. Continuing Participation

ARTICLE 4. ~~PREPAID DENTAL PLAN ORGANIZATIONS~~ ARIZONA DENTAL TRAILER LOAN PROGRAM

Section

R9-23-401. Definitions

R9-23-402. Application Process

R9-23-403. Prioritization of Applications

ARTICLE 1. DEFINITIONS

R9-23-101. Definitions

In this Chapter, unless the context otherwise requires:

1. “Amalgam” means a combination of silver alloy and mercury used for dental restorations.

Notices of Proposed Rulemaking

2. ~~"Bitewing radiograph" means an x-ray film designed to show the crowns of the upper and lower posterior teeth simultaneously.~~
3. ~~"Board eligible" means a dentist who has successfully completed an approved training program in a specialty field recognized by the American Dental Association.~~
4. ~~"Caries" means areas of decay in or on a tooth.~~
5. ~~"Chief executive officer" means the person who has the authority and responsibility for the operation of a prepaid dental plan organization in accordance with the applicable legal requirements and policies approved by the governing authority.~~
1. "Child" means an individual who is:
 - a. 18 years or less, or
 - b. More than 18 years of age attending school.
6. ~~"Composite" means a mixture of a filler, usually quartz, ceramic, or glass particles, and a resin blend used for dental restorations.~~
7. ~~"Contracting agency" means a governmental or nonprofit organization that has contracted with the OOH to provide clinical and/or administrative services.~~
8. ~~"Copal base" means a liquid resin placed under a restoration to insulate the pulpal tissue.~~
9. ~~"Dental facility" means a dental health clinic or institutional department staffed by licensed dentists or licensed dental hygienists, or both.~~
2. "Dental hygienist" means an individual licensed under A.R.S. § Title 32, Chapter 11, Article 4.
10. ~~"Dental sealant" means a thin plastic coating applied to the chewing surfaces of premolar or molar teeth which fills the pits and grooves of a tooth and prevents the trapping of food debris.~~
3. "Dental sealant" means a coating of plastic applied to a tooth.
11. ~~"Dentate" means with teeth.~~
12. ~~"Dentist" means a person who is licensed to practice dentistry under the provisions of A.R.S. § 32-1201 et seq.~~
4. "Dentist" means an individual licensed under A.R.S. Title 32, Chapter 11, Article 2.
13. ~~"Dentition" means the type, number, and arrangement of teeth.~~
14. ~~"Dentures" means a partial or complete set of false teeth designed to simulate the patient's natural dentition.~~
15. ~~5. "Department" means the Arizona Department of Health Services.~~
16. ~~"Diagnostic services" means those dental services necessary to identify dental abnormalities, including radiographs and clinical examinations.~~
17. ~~"Director of an organized educational setting" means the person responsible for the overall management of the facility.~~
18. ~~"Emergency services" means those dental services necessary to control bleeding, relieve pain, including local anesthesia, or eliminate acute infection. Medications that may be prescribed by the dentist, but must be obtained through a pharmacy, are excluded.~~
19. ~~"Endodontics" means dental services related to the pulp of a tooth.~~
20. ~~"Extraoral" means outside of the mouth.~~
21. ~~"Fluoride" means a chemical compound, usually sodium fluoride or acidulated phosphate fluoride, applied topically or as a mouth rinse.~~
22. ~~"General dentist" means a dentist licensed under the provisions of A.R.S. § 32-1201 et seq. whose practice is not limited to a specific area and who is not certified by a specialty board recognized by the American Dental Association.~~
23. ~~"Gingival tissue" means intraoral soft tissue commonly referred to as the gums.~~
24. ~~"Governing authority" means the person or body, including a board of trustees or board of directors, in whom the ultimate authority and responsibility for the direction of a prepaid dental plan organization is vested.~~
25. ~~"Hamular notch" means the area behind the upper back molar.~~
26. ~~"Hygienist" means a person who is licensed to practice dental hygiene under the provisions of A.R.S. § 32-1281 et seq.~~
27. ~~"Intraoral" means inside the mouth.~~
28. ~~"Mandibular" means associated with the lower jaw.~~
29. ~~"Maxillary" means associated with the upper jaw.~~
30. ~~"Mobile Dental Unit" or "MDU" means a self contained dental operatory housed in a movable trailer owned by the Department.~~
31. ~~"Mucobuccal fold" means the space between the cheek and teeth.~~
6. "National School Lunch Program" means the federally funded assisted meal program as established in 7 CFR 210.1 (2003), incorporated by reference, and on file with the Department and the Office of the Secretary of State and including no future additions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.
32. ~~"Occlusion" means the manner in which the upper and lower teeth fit together when the mouth is completely closed.~~
33. ~~"Office of Oral Health" or "OOH" means the office within the Department responsible for oral health services.~~

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- 34. "Operative dentistry" means the use of dental amalgam, dental permanent cement, composite and noncomposite resin materials, cast alloy restorations, stainless steel and aluminum crowns, and various temporary and intermediate materials usually classified as cements to maintain a functional dentition.
- 35. "Operatory" means the patient chair and attached or related equipment used to deliver dental services.
- 36. "Organization" means a prepaid dental plan organization as defined in A.R.S. § 20-1001.
- 37. "Organized educational setting" means any facility providing supervised instructional care or services for children less than 21 years of age.
- 38. "Panographic radiograph" means an x-ray that shows all of the teeth and related structures on 1 film.
- 7. "Parent" has the same meaning as in A.R.S. § 15-101(14).
- 39. "Patient" means a person who is being attended by a dentist or dental hygienist to receive an examination, diagnosis, or dental treatment, or a combination of an examination, diagnosis, and dental treatment.
- 40. "Periapical" means a full view of an individual tooth, including the area under the gum line and around the root of the tooth.
- 41. "Portable dental equipment" means operatory equipment that can be transported by automobile and set up in a public area or private residence.
- 42. "Postdam" means a ridge built into a maxillary denture which touches the posterior soft tissue of the roof of the mouth.
- 43. "Posterior flange" means that part of a denture that extends into the space between the tongue and the mandibular jawbone or the cheek and maxillary jawbone.
- 44. "Preventive services" means dental care intended to maintain dental health and prevent dental disease, including any combination of oral hygiene education, professional prophylaxis, application of fluorides, and a viable system of recall or follow-up.
- 45. "Professional prophylaxis" means cleaning the teeth with mild abrasives and dental equipment.
- 46. "Pulpal" means the soft living tissue that fills the central cavity of a tooth.
- 47. "Radiograph" means a picture produced on a sensitive surface by a form of radiation other than light, including x-ray photographs.
- 48. "Representative sample" means a part of a population or subset from a set of units selected to investigate the properties of the population or the set.
- 49. "Restoration" means treatment that returns a patient to a functional level of dental health, including treatment of the pulpal tissues and gingival tissues, the use of metal and plastic fillings, and the use of removable partial and complete dentures.
- 50. "Saddle area" means that portion of a partial denture which covers the bone where posterior teeth from either the upper or lower jaw have been removed.
- 8. "School" means:
 - a. A school as defined in A.R.S. § 15-101(19), and
 - b. A charter school as defined in A.R.S. § 15-101(3).
- 9. "School representative" means an individual authorized to act on behalf of a school.
- 10. "School year" means the period between July 1 and the following June 30.
- 51. "Specialist" means a dentist whose practice is limited to a specified area and who is recognized by the appropriate specialty board of the Commission on Accreditation of Dental Education of the American Dental Association as board-eligible or board-certified.
- 52. "Therapeutic services" means basic dental services provided by a general dentist including pulp therapy for permanent and primary teeth exclusive of root canal therapy, restoration of carious permanent and primary teeth with materials other than cast restorations, and routine extractions.
- 53. "Treatment plan" means a statement of the services to be performed for the patient.

ARTICLE 2. STANDARDS FOR THE PROVISION OF ORAL HEALTH SERVICES ARIZONA DENTAL SEALANT PROGRAM

R9-23-201. Definitions

"Dental insurance status" means an identification of whether a child has private dental insurance.

R9-23-202. Eligibility Requirements for Participation

A school is eligible to participate in the Arizona Dental Sealant Program if:

- 1. At least 65% of the children attending the school participate in the National School Lunch Program, and
- 2. The school has at least 25 children in grades 2 and 6 combined.

R9-23-203. Application Process

A. To participate in the Arizona Dental Sealant Program, a school representative shall complete an application form provided by the Department that includes the following:

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1. The name, title, telephone number, fax number, and if applicable, e-mail address of the individual who will manage the Arizona Dental Sealant Program for the school;
2. The school's name, street address, and telephone number;
3. The school's mailing address if different than the school's street address;
4. The name of the school district and county where the school is located;
5. The percentage of children attending the school that participate in the National School Lunch Program, and
6. The number of children attending grades 2 and 6.

B. The Department accepts applications between April 1 and May 15 for the next school year.

R9-23-204. Prioritization of Applications

A. The Department shall approve participation in the Arizona Dental Sealant Program based on the following criteria:

1. The amount of funding available to the Department for the Arizona Dental Sealant Program.
2. The percentage of children participating in the National School Lunch Program with the school with the higher percentage receiving the highest priority, and
3. If the percentage of children participating in the National School Lunch Program is the same, the date the application was received at the Department with the higher priority given to applications received earliest.

B. If additional funding becomes available, the Department shall continue to approve participation in the Arizona Dental Sealant Program based on the criteria in subsection (A).

R9-23-205. Program Responsibilities

An individual managing the Arizona Dental Sealant Program for a school has the following responsibilities:

1. Ensuring each child participating in the Arizona Dental Sealant Program has a parental consent form that includes:
 - a. The child's name,
 - b. The child's date of birth,
 - c. The child's gender,
 - d. The parent's telephone number,
 - e. The parent's signature, and
 - f. The child's dental insurance status.
2. Distributing information about the Arizona Dental Sealant Program to the school and to each parent that has a child participating in the Arizona Dental Sealant Program.

ARTICLE 3. ~~ORAL HEALTH SERVICES~~ ARIZONA FLUORIDE MOUTHRINSE PROGRAM

R9-23-301. Definitions

1. "Community water supply" has the same meaning as R18-4-101.
2. "Fluoridated" means adjusting the natural fluoride concentration of a community water supply to prevent dental caries.
3. "Natural fluoride" means the fluoride ion that is already present in a water supply source before it is fluoridated.

R9-23-302. Eligibility Requirements for Participation

The following individuals shall be eligible for dental health services:

1. ~~Children who are eligible for the federal free or reduced school lunch program;~~
2. ~~Persons who are eligible for federal, state, or a combination of federal and state nutrition programs; or~~
3. ~~Persons whose income is at or below 133% of the federal poverty guideline or who are eligible Medicaid recipients but:~~
 - a. ~~Do not have access to dental care, or~~
 - b. ~~Whose physical or mental impairment precludes them from receiving dental services through the private dental sector.~~

A school is eligible to participate in the Arizona Fluoride Mouthrinse Program if at least 50% of the children attending the school participate in the National School Lunch Program and:

1. The school is not connected to a community water supply, or
2. The school is connected to a community water supply that does not have fluoridated water.

R9-23-303. Application Process for Participation

A. To participate in the Arizona Fluoride Mouthrinse Program, a school representative shall submit an application form to the Department that includes the following:

1. The name, title, telephone number, fax number, and if applicable, e-mail address of the individual who will manage the Arizona Fluoride Mouthrinse Program for the school;
2. The school's name, street address, mailing address, and telephone number;
3. The name of the school district and county where the school is located;
4. The grades in the school that will participate in the Arizona Fluoride Mouthrinse Program during the next school

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year;

5. The anticipated number of children that will participate in the Arizona Fluoride Mouthrinse Program during the next school year;
6. The percentage of children attending the school that participated in the National School Lunch Program during the current school year; and
7. The flavor and amount of fluoride mouthrinse needed.

B. The Department accepts applications until April 15 for the next school year.

R9-23-304. Prioritization of Applications

The Department shall approve participation in the Arizona Fluoride Mouthrinse Program for three years based on the following criteria:

1. The amount of funding available to the Department for the Arizona Fluoride Mouthrinse Program.
2. Previous participation in the Arizona Fluoride Mouthrinse Program, and
3. The percentage of children participating in the National School Lunch Program with the school with the higher percentage receiving the highest priority.

R9-23-305. Program Responsibilities

The individual managing the Arizona Fluoride Mouthrinse Program for a school has the following responsibilities:

A. Ensuring that each child participating in the Arizona Fluoride Mouthrinse Program has a parental consent form provided by the Department that includes:

1. The child's name, age, and grade;
2. The school's name;
3. The name of the child's teacher;
4. The signature of a parent; and
5. The date the parent signed.

B. Ordering fluoride mouthrinse.

C. Maintaining the school's records of participation in the Arizona Fluoride Mouthrinse Program as long as each child is attending the school.

D. Distributing information about the Arizona Fluoride Mouthrinse Program to the school and to each parent that has a child participating in the Arizona Fluoride Mouthrinse Program, and

E. Submitting a written program evaluation to the Department by April 15 of each year of participation that includes the following:

1. The name, title, address, telephone number, fax number, and e-mail address, if applicable of the individual who will manage the Arizona Fluoride Mouthrinse Program for the school;
2. The school's name, street address, mailing address, and telephone number;
3. The name of the school district and county where the school is located;
4. The number of the years the school has participated in the Arizona Fluoride Mouthrinse Program;
5. The percentage of children attending the school that participated in the National School Lunch Program;
6. The grades in the school that participated in the Arizona Fluoride Mouthrinse Program;
7. The grades in the school that will participate in the Arizona Fluoride Mouthrinse Program during the next school year;
8. The number of children that participated in the Arizona Fluoride Mouthrinse Program during the current school year;
9. The estimated number of children that will participate in the Arizona Fluoride Mouthrinse Program during the next school year;
10. The number of packets or boxes of fluoride mouthrinse unused at the end of the current school year, if applicable;
11. The number of packets or boxes of fluoride mouthrinse needed for the next school year, and;
12. The flavor of fluoride mouthrinse needed.

R9-23-306. Continuing Participation

A. The Department will not allow a school to continue to participate in the Arizona Fluoride Mouthrinse if the school did not submit a program evaluation.

B. After reviewing a program evaluation, the Department will not allow a school to continue to participate in the Arizona Fluoride Mouthrinse Program if the Department determines:

1. Less than 70% of the children attending the school participated in the Arizona Fluoride Mouthrinse Program during the current school year, or
3. The Arizona Fluoride Mouthrinse Program was administered at the school for less than 8 months during the current school year.

ARTICLE 4. ~~PREPAID DENTAL PLAN ORGANIZATIONS~~ ARIZONA DENTAL TRAILER LOAN PROGRAM

R9-23-401. Definitions

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1. "Applicant" means:
 - a. A non-profit organization;
 - b. A federal, state, local, or tribal government; or
 - c. A school.
2. "Auxiliary personnel" has the same meaning as in A.R.S. § 32-1201(1).
3. "Dental care" means oral health prevention, maintenance, and treatment of diseases, injury, or other dental conditions.
4. "Dental staff" means a dentist, dental hygienist, or auxiliary personnel that participate in the provision of dental care.
5. "Dental trailer" means a transport vehicle designed to be hauled by a truck or tractor containing equipment used to provide dental care.
6. "Target population" means the group of individuals an applicant has determined needs dental care.

R9-23-402. Application Process

A. To participate in the Arizona Dental Trailer Program, an applicant shall submit an application form to the Department that includes the following:

1. The date of the application;
2. The name, address, telephone number, and fax number of the applicant;
3. The name of the individual who will manage the Arizona Dental Trailer Loan Program for the applicant;
4. The dental trailer's proposed physical location;
5. The estimated size of the target population;
6. An explanation of the dental needs of the target population;
7. The type and number of dental staff, and;
8. The estimated hours and days of the week of operation.

B. In addition to the application in subsection (A), an applicant shall provide the following:

1. An estimated operating budget for the dental trailer that includes:
 - a. A list of the revenue sources,
 - b. A list of expenses, and
 - c. A justification of the estimated operating budget, and
2. A written plan for a permanent dental program for the target population that includes:
 - a. The type of facility where the applicant will provide dental care,
 - b. The type and number of dental staff,
 - c. A list of revenue sources,
 - d. The proposed location of the facility where the applicant will provide dental care,
 - e. A list of dental care to be provided.

R9-23-403. Prioritization of applications

The Department shall select an applicant to participate in the Arizona Dental Trailer Loan Program based on the following criteria:

1. The availability of a dental trailer,
2. The target population,
3. The estimated operating budget for the dental trailer,
4. The list of revenue sources, and
5. The type and number of dental staff.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM**

PREAMBLE

1. Sections Affected

R9-28-706

Rulemaking Action

Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

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Authorizing statutes: A.R.S. §§ 36-2903 and 36-2903.01

Implementing statutes: A.R.S. §§ 36-2903.01(H), 36-2903.01(J), 36-2904(I), 36-2908(C), 36-2932 and 36-2955(A)

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 10 A.A.R. 1398, April 9, 2004

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Mariaelena Ugarte
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
Email: proposedrules@ahcccs.state.az.us

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The proposed rules were amended as a result of a Five-Year Rule Review, finding that the reference to another Chapter and Section needed to be updated.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

No studies were reviewed

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

AHCCCS anticipates minimal impact.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Mariaelena Ugarte
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 256-6756
E-mail: proposedrules@ahcccs.state.az.us

Proposed rule language will be available on the AHCCCS web site www.ahcccs.state.az.us the week of July 27, 2004. Please send written comments to the above address by 5:00 p.m., September 16, 2004. E-mail will be accepted.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: September 16, 2004
Time: 1:00 p.m.
Location: AHCCCS
701 E. Jefferson
Phoenix, AZ 85034
Gold Room
Nature: Public Hearing
Date: September 16, 2004

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Time: 1:00 p.m.
Location: ALTCS: Arizona Long-term Care System
110 S. Church, Suite 1360
Tucson, AZ 85701
Nature: Public Hearing

Date: September 16, 2004
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-term Care System
3480 E. Route 66
Flagstaff, AZ 86004
Nature: Public Hearing

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM**

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-28-706. Payments by the Administration for Services Provided to an Eligible ~~Persons~~ Person

- A.** Payment for medically necessary outpatient services.
1. The Administration shall pay for medically necessary outpatient services provided to eligible persons from the effective date of eligibility to the date of enrollment with a program contractor at the negotiated rate, capped fee-for-service rate, or billed charges, whichever is lowest.
 2. Eligible persons residing in areas that are not served by program contractors shall be eligible for ALTCS covered services. The Administration shall make payment for medically necessary outpatient services provided to these ~~individuals~~ ~~persons~~ at the negotiated rate, capped fee-for-service rate, or billed charges, whichever is lowest.
 3. The Administration shall pay for medically necessary outpatient services provided to eligible persons by out-of-state providers at the capped fee-for-service rate under ~~R9-28-708 Article 7 of this Chapter~~ or the Medicaid rate that is in effect at the time services are provided in the state in which the provider is located, whichever is lower.
- B.** The Administration shall make payment in accordance with ~~A.A.C. R9-22-712~~ 9 A.A.C. 22, Article 7 for covered hospital services provided to eligible persons on or after March 1, 1993.
- C.** Limitation on payment for hospital services. The Administration may limit payment for hospital services furnished to hospital inpatients who require a lower covered level of care, such as nursing facility services, to the cost of the lower or alternative level of care, when the Director or designee determines the less costly alternative could and should have been used by a hospital.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
CHILDREN'S HEALTH INSURANCE PROGRAM

PREAMBLE

- 1. Sections Affected**
R9-31-1616
- Rulemaking Action**
Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 36-2903, 36-2903.01 and 36-2986(A)
Implementing statutes: A.R.S. §§ 36-2903.01(H), 36-2903.01(J), 36-2904(I) and 36-2908(C)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 10 A.A.R. 1399, April 9, 2004
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Mariaelena Ugarte
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: proposedrules@ahcccs.state.az.us
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
The proposed rules were amended as result of a 5 Year-Rule Review, finding that clarification was needed in areas where the rules were outdated, and clarifying verbiage was necessary to explain how payments are made and to whom, for a Native American member.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
No studies were reviewed.
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**
AHCCCS anticipates minimal impact.
- 9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
Name: Mariaelena Ugarte
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 256-6756
Email: proposedrules@ahcccs.state.az.us

Notices of Proposed Rulemaking

Proposed rule language will be available on the AHCCCS web site www.ahcccs.state.az.us the week of July 27, 2004. Please send written comments to the above address by 5:00 p.m., September 16, 2004. E-mail will be accepted.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: September 16, 2004

Time: 1:00 p.m.

Location: AHCCCS
701 East Jefferson
Phoenix, AZ 85034
Gold Room

Nature: Public Hearing

Date: September 16, 2004

Time: 1:00 p.m.

Location: ALTCS: Arizona Long-term Care System
110 South Church, Suite 1360
Tucson, AZ 85701

Nature: Public Hearing

Date: September 16, 2004

Time: 1:00 p.m.

Location: ALTCS: Arizona Long-term Care System
3480 East Route 66
Flagstaff, AZ 86004

Nature: Public Hearing

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

CHILDREN'S HEALTH INSURANCE PROGRAM

ARTICLE 16. SERVICES FOR NATIVE AMERICANS

R9-31-1616. Standards for Payments

- A. The Administration shall bear no liability for providing covered services to or completing a plan of treatment for any member beyond the date of termination of a member's eligibility or enrollment as specified in A.R.S. § 36-2987.
- B. The Administration shall make payments to ~~the IHS, a Tribal Facility, or under referral from an IHS or a Tribal Facility provider~~ other provider based on the Administration's capped fee schedule as specified in A.A.C. R9-22-710 for outpatient services.
- C. The Administration shall make payments to ~~the IHS, or a Tribal Facility, or other provider~~ based on the all inclusive inpatient rates ~~published in the Federal Register~~ established by the Administration.
- D. The Administration shall pay inpatient and outpatient hospital services ~~provided-rendered~~ by a provider under referral from the IHS or a Tribal Facility provider based on A.R.S. §§ 36-2987, 36-2904, 36-2903.01, and A.A.C. R9-22-712 and A.A.C. R9-22-718, as applicable. Discounts and penalties shall be as specified in A.R.S. § 36-2987(C).
- E. The Administration shall bear no liability for a subcontract that the IHS or a Tribal Facility executes with other parties for the provision of administrative or management services, medical services, or covered health care services, or for any other

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purpose. The IHS or a Tribal Facility shall indemnify and hold the Administration harmless from any and all liability arising from the IHS or a Tribal Facility's subcontracts, shall bear all costs of defense of any litigation over the liability, and shall satisfy in full any judgment entered against the Administration in litigation involving the IHS or a Tribal Facility's subcontracts

NOTICE OF PROPOSED RULEMAKING

TITLE 13. PUBLIC SAFETY

**CHAPTER 1. DEPARTMENT OF PUBLIC SAFETY
CRIMINAL IDENTIFICATION SECTION**

PREAMBLE

1. Sections Affected

Rulemaking Action

R13-1-101	New Section
R13-1-102	New Section
R13-1-103	New Section
R13-1-104	New Section
R13-1-105	New Section
R13-1-106	New Section
R13-1-107	New Section
R13-1-108	New Section
R13-1-109	New Section
Article 2	New Article
R13-1-201	New Section
R13-1-202	New Section
R13-1-203	New Section
R13-1-204	New Section
Article 3	New Article
R13-1-301	New Section
R13-1-302	New Section
Article 4	New Article
R13-1-401	New Section
R13-1-402	New Section
Article 5	New Article
R13-1-501	New Section
R13-1-502	New Section
R13-1-503	New Section
R13-1-504	New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 41-1750

Implementing statute: A.R.S. § 41-1750

3. A list of all-previous notices appearing in the Arizona Administrative Register, addressing the proposed rule:

Notice of Rulemaking Docket Opening: 10 A.A.R., 321, January 23, 2004

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Lieutenant Laurence Burns, Licensing and Regulatory Bureau Commander

Address: P.O. Box 6638
Mail Drop 1170
Phoenix, AZ 85005-6638

Telephone: (602) 223-2387

Fax: (602) 223-2928

E-mail: lburns@dps.state.az.us

5. An explanation of the rule, including the agency reasons for initiating the rule:

The Department has the authority to operate the Central State Repository under A.R.S. § 41-1750(H). The Department will amend the rules under the rulemaking authority specified in A.R.S. § 41-1750 (B) by adding guidelines for

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submission and retention of criminal justice information; defining other pertinent information and establishing the form and manner in which chief officers of criminal justice agencies are to submit information; defining the necessary information and establishing the form and manner in which chief officers of law enforcement agencies are to submit information; establishing training and proficiency guidelines for chief officers of criminal justice agencies; defining the information to be submitted by chief officers of criminal justice agencies concerning crimes that manifest evidence of prejudice; adding fees for non-criminal justice fingerprint checks and fees for department reports; specifying the process involved in fee collection; adding limitations on dissemination of criminal information; and adding security measures to ensure access is limited to authorized parties.

6. A reference to any study that the agency intends to rely on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material.

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

Under the requirements found in A.R.S. § 41-1750(J), a fee of \$24.00 is charged those authorized users who submit fingerprint cards to cover the cost of federal non-criminal justice fingerprint processing. The Federal Bureau of Investigation (FBI) sets this fee. The Department collects the fee on behalf of the FBI and passes the fee along to the United States Government. Under A.R.S. § 41-1759(M), monies in the fund that are required for payment to the United States are not revertible.

Under A.R.S. § 41-1750(K), a fee of \$6.00 is charged to cover the cost of processing copies of Department reports of accident scenes. A fee of \$4.00 is charged for photograph reproduction. These photographs are generally 8" X 10" color photographs. Governmental agencies are exempt from this fee. The major users of this service are county attorneys, state risk management, private auto insurance companies, private investigative firms that are contracted by auto insurance companies, and citizens who have been involved in an accident and desire a copy of accident photographs and the report. Under A.R.S. § 41-1759(N), any balance in the fund not required for support of the functions related to providing these documents reverts to the state general fund.

Under the authority granted the director of the Department of Public Safety by A.R.S. § 41-1750(J), a fee of \$6.00 was initiated in 1997 to recover the costs of state non-criminal justice fingerprint processing. On October 1, 2003, this fee was reduced to \$5.00 and was expanded to include non-criminal fingerprint processing for local, state, and federal non-criminal justice agencies. Because the Department does not receive any general fund appropriations to cover the cost of providing these services, the fees collected are used to fund the personnel, equipment, and supplies for these functions. Under A.R.S. § 1750(M), any balance in the fund at the end of the fiscal year that is not required to support the Department's non-criminal justice fingerprint-processing duties reverts to the state general fund.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Lieutenant Laurence Burns
Licensing and Regulatory Bureau Commander

Address: P.O. Box 6638
Mail Drop 1170
Phoenix, AZ 85005-6638

Telephone: (602) 223-2387

Fax: (602) 223-2928

E-mail: lburns@dps.state.az.us

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

A proceeding is scheduled for September 23, 2004 at 10:00 a.m., to take place at the Arizona Peace Officer Standards Training Board (AZ POST), 2643 E. University Drive, Phoenix, AZ 85034.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 13. PUBLIC SAFETY

CHAPTER 1. DEPARTMENT OF PUBLIC SAFETY

CRIMINAL IDENTIFICATION SECTION

ARTICLE 1. CRIMINAL HISTORY RECORDS

Section

<u>R13-1-101.</u>	<u>Definitions</u>
<u>R13-1-102.</u>	<u>Submission and Retention of Criminal Justice Information</u>
<u>R13-1-103.</u>	<u>Procedures for Law Enforcement and Prosecutor Offices to Forward Dispositions of Criminal Programs to the Central State Repository</u>
<u>R13-1-104.</u>	<u>Procedures for the Department of Corrections or Department of Juvenile Corrections to Forward Dispositions of Criminal History Records to the Central State Repository</u>
<u>R13-1-105.</u>	<u>Procedures for a Criminal Court to Forward Dispositions of Criminal Charges to the Central State Repository</u>
<u>R13-1-106.</u>	<u>Arrest Fingerprint Record Submission</u>
<u>R13-1-107.</u>	<u>Procedures for Review of Accuracy and Completeness of Criminal History Records</u>
<u>R13-1-108.</u>	<u>Procedures for Challenging the Accuracy and Completeness of Criminal History Records</u>
<u>R13-1-109.</u>	<u>Information Deemed Useful for the Study and Prevention of Crime and the Administration of Criminal Justice</u>

ARTICLE 2. ACJIS NETWORK

Section

<u>R13-1-201.</u>	<u>ACJIS Security Measures</u>
<u>R13-1-202.</u>	<u>Arizona Criminal Justice Information System Training and Proficiency Guidelines</u>
<u>R13-1-203.</u>	<u>Terminal Operator Certification Training Program</u>
<u>R13-1-204.</u>	<u>Procedures and Restrictions on Dissemination of Information</u>

ARTICLE 3. ARIZONA CRIME STATISTICS

Section

<u>R13-1-301.</u>	<u>Submittal of Hate Crimes Information</u>
<u>R13-1-302.</u>	<u>Submittal of Uniform Crime Information</u>

ARTICLE 4. APPLICANT FINGERPRINT PROCESSING

Section

<u>R13-1-401.</u>	<u>Non-criminal Justice Fingerprint Processing Charges</u>
<u>R13-1-402.</u>	<u>Refusal of Service</u>

ARTICLE 5. DEPARTMENT RECORDS

Section

<u>R13-1-501.</u>	<u>Procedure for Obtaining a Traffic Accident Report</u>
<u>R13-1-502.</u>	<u>Charges for Copies of Traffic Accident Reports and Photographs</u>
<u>R13-1-503.</u>	<u>Procedure for Obtaining Copies of Offense, Arrest, or Incident Reports</u>
<u>R13-1-504.</u>	<u>Charges for Copies of Offense, Arrest, or Incident Reports</u>

ARTICLE 1. CRIMINAL HISTORY RECORDS

R13-1-101. Definitions.

In addition to the definitions in A.R.S. §41-1750, the following definitions apply to this Chapter:

1. "Access Authorization List" means a list that contains agency personnel who are authorized to receive information directly or indirectly via the ACJIS network.
2. "ACJIS" means the Arizona Criminal Justice Information System, a statewide network housing various databases on persons and property in this state. The ACJIS network is maintained by the Department and is available to authorized local, state, and federal criminal justice agencies.
3. "ALETS" means the Arizona Law Enforcement Telecommunications System.
4. "Arizona Computerized Criminal History" means a criminal history record kept by the Department in a database of offenders arrested in this state.
5. "Arrest Fingerprints" means a complete legible set of fingerprints (single rolls of each finger, both thumbs, and the four finger pats) taken at the time of arrest.
6. "Arresting Agency Case Number (OCA)" means a unique alphanumeric identifier consisting of a combination of 15 numbers and letters used to identify a local agency's case number such as the Department case number, Department

- report number, or case report number.
7. "AZAFIS" means the Arizona Automated Fingerprint Identification System maintained by the Department that stores state-level fingerprints and related information.
 8. "AZAFIS Image Scanner" means the scanning system that scans and transmits ink and roll arrest fingerprint records.
 9. "AZAFIS Livescan" means the electronic system that captures and transmits arrest information and fingerprints.
 10. "CHRI" means Criminal History Record Information.
 11. "Classifiable Fingerprints" means fingerprint impressions that meet the criteria of the Federal Bureau of Investigation.
 12. "Court Originating Agency Identifier (ORI)" means an identifier assigned by the FBI to a specific court.
 13. "Date of Arrest" means the date a person is taken into custody using the MMDDCCYY format as indicated in Exhibit A.
 14. "Date of Birth" means the subject's date of birth using MMDDCCYY format as indicated in Exhibit A.
 15. "Department" means the Arizona Department of Public Safety.
 16. "Disposition Date" is the date of final disposition of a charge.
 17. "Hit Confirmation" means to verify the record entry with the agency that holds the record.
 18. "Hot Files" means records entered into ACJIS. These records may include wanted persons and stolen vehicles.
 19. "Juvenile Fingerprinted" means identification of a juvenile on an arrest fingerprint card if the juvenile is being remanded as an adult.
 20. "Local Subject Identifier (LSI)" means a unique 15 alphanumeric character number used by local law enforcement agencies to identify an individual. It is the local equivalent of a State Identification (SID) number. The first three characters are the AZAFIS-assigned mnemonic alpha characters, which identify the agency.
 21. "NCIC" means the National Crime Information Center maintained by the FBI, a national repository of files on persons and property relating to a crime.
 22. "NIBRS" means the National Incident-Based Reporting System, an incident-based reporting system designed to collect data on each single crime occurrence and each incident and arrest within that occurrence for 22 specific crime categories.
 23. "NLETS" means the National Law Enforcement Telecommunications System, a message switching system for the interstate exchange of criminal justice information.
 24. "Offender-based Tracking System" means a computer system database that indexes information from selected Arizona Criminal Justice Information System data files.
 25. "Offense" means an offense listed in the Arizona Revised Statutes or a city criminal code that is used to arrest an offender.
 26. "Offense Classification" means whether the offense is a felony, designated as "F", or a misdemeanor, designated as "M."
 27. "ORI" means a unique identifier assigned by the FBI to an agency.
 28. "PCN" means Process Control Number.
 29. "Personal Identifiers" means a subject's sex, race, height, weight, and eye color.
 30. "Photo Contact Sheet" means an 8" X 10" photo paper containing pictures from an entire roll of film.
 31. "Place of Birth (state or country)" means a subject's place of birth.
 32. "Private Entity" means a non-governmental agency or company.
 33. "Redacted" means a record is edited based on legal considerations or to withhold sensitive or private, personal information.
 34. "State Identification Number (SID)" means an identification number that is assigned by the Department to an individual whose set of fingerprints have been submitted to AZAFIS.
 35. "Terminal Operator Certification Level A" means a terminal operator who is authorized to access the ACJIS network for entering, updating, clearing, canceling records, conducting inquiries, and interpreting responses.
 36. "Terminal Operator Certification Level B" means a terminal operator who inquires into the ACJIS network and interprets responses only.
 37. "Terminal Operator Certification Level C" means a terminal operator who inquires into the ACJIS/NCIC "hot files" via Mobile Digital Terminals and computers that do not have criminal history access.
 38. "Terminal Operator Certification Level D" means technical personnel who indirectly access and view information obtained from the ACJIS network.
 39. "TOC" means Terminal Operator Certification Number.
 40. "UCR" means Uniform Crime Reporting.

R13-1-102. Submission and Retention of Criminal Justice Information

- A.** A criminal justice agency in this state shall submit criminal history records information (CHRI) to the Central State Repository.
1. A law enforcement agency shall submit arrest fingerprint records to the Department through the Arizona Automated

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Fingerprint Identification System (AZAFIS) or through the mail.

2. A law enforcement agency shall submit any corrections to previously submitted arrest fingerprint records to the Department by fax or mail on the "Correction of Information" form available from the Department. The Department shall correct the record as requested. Corrections to arrest records may only be requested by the agency that created the arrest record. The "Correction of Information" form shall include:
 - a. Agency name.
 - b. Name of agency employee completing the form.
 - c. Contact telephone number, and
 - d. Arrest record number requiring correction and the specific error and correction needed.
3. Law enforcement agencies, prosecutors' offices, and courts shall submit dispositions related to arrest fingerprint records to the Department.
4. A court shall submit court orders that affect criminal history records to the Department. The Department shall update the criminal history record based on the information received in the court order.
5. A county medical examiner shall provide a full set of ten inked and rolled fingerprints to the Department of all deceased person whose death is required to be investigated by the county medical examiner's office. The Department shall search the fingerprints to determine if any criminal record is maintained and update the record to indicate notification of the death. The county medical examiner shall ensure that the complete fingerprint record includes:
 - a. Deceased person's full name.
 - b. Date-of-birth.
 - c. Sex.
 - d. Race.
 - e. Height.
 - f. Weight, and
 - g. Eye and hair color.

B. The Department shall retain criminal history records until the subject of record either reaches age 99 or after the Department receives proper death notification.

R13-1-103. Procedures For Law Enforcement and Prosecutor Offices to Forward Dispositions of Criminal Proceedings to the Central State Repository

- A.** A law enforcement agency and prosecutor office shall submit a completed disposition report form to the Central State Repository as outlined in A.R.S. § 41-1750.
- B.** The law enforcement agency that prepares the Disposition Report form shall complete the information in blocks #1 through 16 on the Disposition Report form, as shown in Exhibit A, for the arrest charges filed by the agency. The law enforcement agency that prepares the Disposition Report form shall forward the form to the appropriate prosecutor's office. If the arresting agency makes a decision not to pursue criminal charges, the arresting agency shall complete blocks #1 through #16 and blocks #18, 25, and 26, and submit the completed form to the Central State Repository. The Central State Repository shall update the criminal history record with the disposition report information.
- C.** The prosecutor's office shall verify the arrest charges listed on the Disposition Report form by the law enforcement agency, and add or amend the arrest charges listed by completing blocks #10 and 17, if applicable. The prosecutor's office shall reflect a decision to terminate one or all of the arrest charges on the Disposition Report form by completing all of the applicable blocks on the form.
 1. For arrest charges filed with the court by the prosecutor, the prosecutor shall verify or complete information in blocks #10 through 16 and block #17, if applicable, on the Disposition Report form and forward the form to the appropriate court as required by the Arizona Rule of Criminal Procedure 37.2
 2. If the prosecutor decides not to file arrest charges with the court on one or more of the arrest charges listed on the Disposition Report form, the prosecutor shall complete blocks #18, 25, and 26. The prosecutor shall forward the completed Disposition Report form to the Central State Repository, and the prosecutor shall forward a photocopy of the form to the appropriate court, if one or more charges are being filed with the court. The Central State Repository shall update the criminal history record to indicate the disposition for arrest charges not filed by the prosecutor.
- D.** Agencies may submit disposition information electronically to the Department in lieu of paper form providing the agency enforces quality control measures and follows the electronic disposition formats provided by the Department.

R13-1-104. Procedures for the Department of Corrections or Department of Juvenile Corrections to Forward Dispositions of Criminal History Records to the Central State Repository

- A.** The Department maintains criminal history records in the Central State Repository for juveniles as the subject of record only if the juvenile was remanded to an adult court. If a criminal justice agency is processing a juvenile who is remanded to an adult court, the agency shall use the same procedures in submitting criminal history records to the Central State Repository as described in this Article.
- B.** The Arizona Department of Corrections shall forward each week to the Department a computer tape that includes, for

each inmate within the prison system, the inmate's full name, date of birth, sex, race, inmate number assigned by the agency, arrest information for which the inmate is serving time in prison, and custody status. The Department shall update computerized files of the Offender Based Tracking System and the Arizona Computerized Criminal History when applicable.

R13-1-105. Procedures for a Criminal Court to Forward Dispositions of Criminal Charges to the Central State Repository

- A.** A criminal court shall submit the disposition of all charges to the Central State Repository under Rule 37 of the Arizona Rules of Criminal Procedure.
- B.** The court shall verify the arrest charges listed on the Disposition Report form and complete the applicable blocks for each charge addressed by the court.
- C.** If there is more than one arrest charge listed on the Disposition Report form and any of these charges are being adjudicated by another court, the court may photocopy the Disposition Report form and forward it to the other court.
- D.** The court shall complete and forward the disposition form to the Central State Repository. The Central State Repository shall update the criminal history record with the disposition report information.
- E.** A criminal court may use a disposition report supplemental form provided by the Department to report additional arrest charges and dispositions of the charges. The Disposition Report form is used to record the first three charges of an arrest event and the disposition of these charges. The disposition report supplemental form is used to record additional charges and the dispositions of those additional charges.
- F.** Agencies may submit disposition information electronically to the Department in lieu of paper form providing the agency enforces quality control measures and follows the electronic disposition formats provided by the Department.

R13-1-106. Arrest Fingerprint Record Submission

- A.** The chief officer of a criminal justice agency shall send a completed arrest fingerprint record, a format prescribed by the Department, to the Central State Repository within ten days from the date of fingerprinting, using one of the following methods:
 - 1. Arizona Automated Fingerprint Identification System, (AZAFIS) Livescan,
 - 2. AZAFIS Image Scanner, or
 - 3. Ink-and-Roll arresting fingerprint card.
- B.** The chief officer of a criminal justice agency shall submit only one arrest fingerprint record to the Department for each arrest.
- C.** A criminal justice agency utilizing the Ink-and-Roll method shall obtain blank arrest fingerprint cards from the FBI using the CJIS Supply Requisition Form (I-178).
- D.** The completed arrest fingerprint record shall contain the following information:
 - 1. Name.
 - 2. Date of birth.
 - 3. Personal identifiers.
 - 4. Juvenile fingerprinted, if applicable.
 - 5. Date of arrest.
 - 6. ORI, and arresting agency's name and address.
 - 7. Date of offense.
 - 8. Place of birth (state or country).
 - 9. Arresting agency case number.
 - 10. Local Subject Identifier (LSI).
 - 11. Offense.
 - 12. Offense Literal.
 - 13. Offense Classification.
 - 14. Court Originating Agency Identifier (ORI).
 - 15. Processing Control Number (PCN).
 - 16. Name or number of official taking fingerprints, and
 - 17. Arrest fingerprints.

R13-1-107. Procedures for Review of Accuracy and Completeness of Criminal History Records

- A.** The subject of record or the subject's attorney may request criminal history record information maintained by the Department for the sole purpose of reviewing the accuracy and completeness of the subject of record's criminal history record.
- B.** To obtain a copy of a criminal history record, the subject of record shall submit a completed "Record Review Instruction Packet" provided by the Department.
- C.** The completed Record Review Instruction Packet shall include the following for the subject of record:
 - 1. Full set of classifiable fingerprints taken by an official at a law enforcement agency.
 - 2. Name.

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3. Date of birth.
4. Sex.
5. Race.
6. Height.
7. Weight.
8. Eye color.
9. Hair color.
10. Place of birth.
11. Social security number.
12. Address of residence.
13. Date fingerprinted, and
14. Signature.

- D.** The completed Record Review Instruction Packet shall be returned to the Department in the envelope provided.
- E.** A subject of record's attorney may obtain the subject of record's criminal history record by providing a notarized letter of authorization from the subject of record with the completed Record Review Instruction Packet.
- F.** Within 15 days of receipt of the completed Record Review Instruction Packet, the Department shall provide a response to the subject of record or the subject's attorney. The response shall include arrest and disposition information maintained by the Department on the subject of record and an "Review & Challenge of Arizona Criminal History Record Information" form which includes:
1. Subject of record's full name;
 2. Signature of subject of record or attorney representing the subject of record;
 3. Date of submission of the challenge;
 4. Summary of the exceptions and reasons for the challenge, specifies each arrest, and includes:
 - a. Name of arresting agency.
 - b. Date of arrest.
 - c. Arrest number, and
 - d. Charge.
 5. Subject of record's mailing address; and
 6. Signature of the subject of record, verifying the summary of exceptions and reasons.

R13-1-108. Procedures for Challenging the Accuracy and Completeness of Criminal History Records

- A.** To challenge a criminal history record, the subject of record or the subject of record's attorney shall complete and return the "Review & Challenge of Arizona Criminal History Record Information" form referenced in R13-1-107(E) above.
- B.** The Department shall audit the challenged entries within 15 days of receipt of the form by:
1. Contacting the contributing agencies.
 2. Verifying the information, and
 3. Researching dispositions on any challenged entry.
- C.** If the Department determines that a correction of the criminal history record is necessary, the Department will modify the record and notify the Federal Bureau of Investigation.
- D.** Upon conclusion of the audit, the Department shall send written notification of the result and a copy of any modification to the subject of record or the subject of record's attorney.

R13-1-109. Information Deemed Useful for the Study and Prevention of Crime and the Administration of Criminal Justice

To obtain criminal history records from the Central State Repository for the purpose of research, evaluative or statistical activities, the prevention of crime, or to provide services for the administration of criminal justice:

1. The requestor shall provide a written request to the Department that specifies the purpose of the study, or how the records will be used to prevent crime or administer criminal justice;
2. The Department shall prepare a non-disclosure agreement;
3. The requestor shall sign the non-disclosure agreement provided by the Department, under A.R.S. § 41-1750(G)(9); and
4. The Department shall review and approve the signed non-disclosure agreement if it meets the requirements in A.R.S. § 41-1750(G)(9).

ARTICLE 2. ACJIS NETWORK

R13-1-201. ACJIS Security Measures

- A.** An Arizona law enforcement or criminal justice agency that collects, stores, disseminates, or accesses criminal justice information from the Arizona Criminal Justice Information System (ACJIS) network shall have a signed ACJIS User Agreement on file with the Department. The user agreement states the agency must follow state and federal rules and reg-

ulations relating to the collection, storage, dissemination, and access of criminal justice information and criminal history record information obtained directly or indirectly from the Arizona Criminal Justice Information System Network.

- B.** An agency assessing the ACJIS network shall follow the state and federal security guidelines which includes, but is not limited to, the access and dissemination of ACJIS information; complete, accurate, and timely record entries; system mis-use sanctions; approved hardware/software specifications; and appropriate operator certification level.
- C.** An agency that has access to the National Crime Information Center System through the ACJIS Network shall follow the requirements set forth by the Federal Bureau of Investigations to ensure the security of the network.
- D.** All agencies that interface their record management system with the ACJIS network shall follow the requirements listed in subsections (A), (B), and (C), and any interface standards and security requirements the Department deems as necessary to ensure the security of the ACJIS network.

R13-1-202. Arizona Criminal Justice Information System Training and Proficiency Guidelines

A law enforcement or criminal justice agency that accesses the ACJIS Network shall follow the ACJIS terminal operator certification (TOC) testing guidelines developed and maintained by the Department. The guidelines are:

- 1. Each agency with direct access to the ACJIS Network shall appoint an ACJIS System Security Officer (SSO) who shall act as liaison to the State CJIS Systems Officer.
- 2. The agency SSO shall:
 - a. Oversee the development and maintenance of the agency's ACJIS Network and TOC training outlines;
 - b. Oversee the Terminal Operator Certification Training Program;
 - c. Oversee the Criminal Justice Practitioners and Technical Personnel Training Program; and
 - d. Ensure all agency terminal operators pass a test, with a minimum score of 70 percent, for the appropriate Terminal Operator Certification Level.

R13-1-203. Terminal Operator Certification Training Program

A. The Department or local agency personnel shall provide terminal operator training and certification.

B. Terminal operator certification levels are:

- 1. Level A.
- 2. Level B.
- 3. Level C, and
- 4. Level D.

C. A Terminal operator certification training program for levels A, B, or C may contain one or all of the following:

- 1. Privacy and security of the ACJIS/NCIC system.
- 2. Record inquiry and entry procedures on all databases.
- 3. Validation procedures.
- 4. Hit confirmation procedures.
- 5. Dissemination procedures.
- 6. Terminal operator certification procedures.
- 7. Use of Arizona Law Enforcement Telecommunication System (ALETS) and the National Law Enforcement System (NLETS), and
- 8. Viewing the ACJIS operations overview video.

D. A Terminal operator certification training program for level D shall include:

- 1. Privacy and Security of the ACJIS/NCIC system, and
- 2. Viewing the ACJIS Operations Overview Video.

R13-1-204. Procedures and Restrictions on Dissemination of Information

A. A criminal justice agency shall follow the terms and conditions for dissemination of criminal justice or criminal history record information outlined in:

- 1. A.R.S. § 41-1750.
- 2. 28 CFR Part 20, incorporated by reference, available from the Department and the FBI, and
- 3. The ACJIS User Agreement as stated in R13-1-201.

B. A criminal justice agency shall provide an access authorization list to the Department. The Department shall disseminate criminal justice or criminal history record information only to individuals on the agency's access authorization list. The authorization list shall include:

- 1. Name of agency.
- 2. Name of authorized individual.
- 3. Date of birth of authorized individual.
- 4. Date of hire of authorized individual, if applicable.
- 5. Terminal operator certification number of authorized individual, if applicable, and
- 6. Phone numbers of authorized individual.

ARTICLE 3. ARIZONA CRIME STATISTICS

R13-1-301. Submittal of Hate Crimes Information

A law enforcement agency shall submit hate crime information to the Department as outlined in the following publications that are incorporated by reference, available from the Department and the FBI, and contain no future editions or amendments:

- A.** Federal Bureau of Investigation Training Guide for Hate Crime Data Collection Manual, and Federal Bureau of Investigation Hate Crime Data Collection Guidelines, dated October 1999, or
- B.** Federal Bureau of Investigation National Incident Based Reporting System Handbooks:
 - 1. Uniform Crime Reporting Handbook, NIBRS Edition, dated 1992,
 - 2. Volume 1 – Data Collection Guidelines, dated August 2000,
 - 3. Volume 2 – Data Submission Specifications, dated May 1992, and NIBRS addendum for submitting LEOKA data, dated October 2002, and
 - 4. Volume 4 – Error Message Manual, dated December 1999.
- C.** Federal Bureau of Investigation - State Program Bulletins.

R13-1-302. Submittal of Uniform Crime Information

An Arizona law enforcement agency shall submit uniform crime information to the Department as outlined in the following publications that are incorporated by reference, available from the Department and the FBI, and contain no future editions or amendments:

- A.** Federal Bureau of Investigation Uniform Crime Reporting Handbook, dated 1984, or
- B.** Federal Bureau of Investigation National Incident Based Reporting System Handbooks:
 - 1. Uniform Crime Reporting Handbook, NIBRS Edition, dated 1992,
 - 2. Volume 1 – Data Collection Guidelines, dated August 2000,
 - 3. Volume 2 – Data Submission Specifications, dated May 1992, and NIBRS addendum for submitting LEOKA data, dated October 2002, and
 - 4. Volume 4 – Error Message Manual, dated December 1999.
- C.** Federal Bureau of Investigation - State Program Bulletins.

ARTICLE 4. APPLICANT FINGERPRINT PROCESSING

R13-1-401. Non-criminal Justice Fingerprint Processing Charges

- A.** Non-criminal justice applicant fingerprint processing charges are:
 - 1. For a state criminal records check, \$5, and
 - 2. If a federal criminal record check by the FBI is requested by the applicant, the Department shall collect an additional fee to cover the cost billed by the FBI for the federal criminal records check.
- B.** For a state criminal records check, the fees may only be submitted in the form of:
 - 1. State Companion Action Transfer,
 - 2. State Direct Deposit form,
 - 3. Cashier's check,
 - 4. Money order,
 - 5. Check drawn on a government agency account, or
 - 6. For Department sections submitting applicant fingerprint cards, via a Department funds transmittal form.
- C.** All fees are non-refundable.

R13-1-402. Refusal of Service

- A.** If any form of payment is not accepted by the Department's banking facility, the Department shall send the state agency, company, or individual that submitted the payment a notice of nonpayment.
- B.** The notice of nonpayment shall notify the state agency, company, or individual that the Department will not accept non-criminal justice fingerprint submissions from them until past due payment is made.
- C.** At the Department's discretion, the Department may require the delinquent party to submit all future payments in the form of a cashier's check or money order.

ARTICLE 5. DEPARTMENT RECORDS

R13-1-501. Procedure for Obtaining a Traffic Accident Report

- A.** Any person or entity, public or private, may obtain traffic accident reports and photos from the Department.
- B.** A governmental agency requesting a traffic accident report may obtain the report free of charge. The Department shall charge the general public or a private entity a processing fee as listed in R13-1-502.
- C.** To obtain a copy of a Department traffic accident report or photograph, the requestor shall:
 - 1. Complete and submit the Department "Request for Copy of Report" form, available from the Department Records Unit. The "Request for Copy of Report" form shall include:
 - a. The requestor's name,

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- b. The requestor's address.
- c. The requestor's phone number.
- d. All information known regarding the traffic accident, and
- e. Specify request for:
 - i. The traffic accident report only.
 - ii. Photographs only, or
 - iii. The traffic accident report and photographs; and
 - iv. Pay the fee under R13-1-502, if applicable.
- D. Once the investigating officer submits the traffic accident report, the Department shall make accident reports and photographs available to requestors. The Department shall release available traffic accident reports and photographs promptly after receiving the Request for Copy of Report form and payment of fees.
- E. The Department redacts Social Security information from traffic accident reports released to the general public.
- E. The Department shall not provide traffic accident reports for commercial solicitation under A.R.S. § 28-667.

R13-1-502. Charges for Copies of Traffic Accident Reports and Photographs

- A. The fees for copies of traffic accident reports and photographs are:
 - 1. For traffic accident reports, nine dollars for up to nine pages and one dollar for each additional page over nine.
 - 2. Four dollars per photograph, and
 - 3. Ten dollars per contact sheet.
- B. Fees mailed to the Department shall be in the form of a cashier's check, money order, or a business check payable to the Arizona Department of Public Safety. Fees paid in person may be paid with a cashier's check, money order, business check, exact change in cash, or a personal check if accompanied by valid picture identification.

R13-1-503. Procedure for Obtaining Copies of Offense, Arrest, or Incident Reports

- A. An Offense, Arrest, or Incident report is available to any person or entity, private or public, in accordance with A.R.S. § 39-121, by contacting the Department custodian of public records.
- B. A government agency requesting an Offense, Arrest, or Incident report, may obtain the report free of charge. The Department shall charge the general public or a private entity a processing fee as listed in R13-1-504.
- C. To obtain a copy of a Department Offense, Arrest, or Incident report, the requestor shall:
 - 1. Complete and submit the Department Public Records Unit Request form provided on the Department web-site, or provide a written request that includes:
 - a. The requestor's name;
 - b. The requestor's address;
 - c. The requestor's phone number, fax number, or both; and
 - d. All information known regarding the offense, arrest or incident, including the Department report number; and
 - 2. Pay all applicable fees.
- D. Once the Offense, Arrest, or Incident report is submitted by the investigating officer, the Department shall make the report available to requestors. The Department shall release available Offense, Arrest, or Incident reports promptly in accordance with A.R.S. § 39-121.
- E. The Department may redact certain information in Departmental reports based on legal considerations.

R13-1-504 Charges for Copies of Offense, Arrest, or Incident Reports

- A. The fees for copies of Offense, Arrest, or Incident reports are nine dollars for up to nine pages and one dollar for each additional page over nine.
- B. Fees mailed to the Department shall be in the form of a cashier's check, money order, or a business check payable to the Arizona Department of Public Safety. Fees paid in person may be paid with cashier's check, money order, business check, or exact change in cash.

EXHIBIT A

DISPOSITION REPORT FORM BLOCK COMPLETION INSTRUCTIONS
FOR LAW ENFORCEMENT AND PROSECUTORS

Block #1: SID NUMBER/AZ: If subject was previously arrested, the State Identification number may be obtained from the Arizona Computerized Criminal History (ACCH) files via terminal inquiry.

Block #2: NAME: Subject's complete name as shown on the arrest fingerprint record, which was completed for this arrest.

Block #3: DATE OF BIRTH (DOB): As shown on the arrest fingerprint record (MMDDCCYY) MM = month, DD= day, CCYY = full year. Example: 03/20/1954.

Block #4: DATE OF ARREST: As shown on the arrest fingerprint record (MMDDCCYY) MM = month, DD= day, CCYY = full year. Example: 04/20/2001.

Block #5: PCN: Processing control number (PCN) assigned for specific arrest incident via AZAFIS.

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Block #6: ARRESTING AGENCY ORI: The NCIC-assigned originating agency identifier (ORI).

Block #7: ARRESTING AGENCY CASE NUMBER: The arresting agency's case number.

Block #8: BOOKING AGENCY ORI: The NCIC-assigned originating agency identifier (ORI).

Block #9: BOOKING NUMBER: The number assigned by the detention facility.

Block #10: CHARGES: Each offense charged at the time of arrest MUST be listed on line "a". Line "b" is used only for subsequent amendment to the initial arrest charge(s).

Block #11: ARIZONA REVISED STATUTE (A.R.S.) or Ordinance: Enter the correct A.R.S. number or the County/City Ordinance number for each charge (as indicated on the arrest fingerprint record.)

Block #12: DATE OF OFFENSE/VIOLATION: Enter the date the offense/violation was committed (MMDDCCYY).

Block #13: OFFENSE TYPE: Circle "M" for misdemeanor. Circle "F" for felony.

Block #14: PREPARATORY OFFENSE CODE: Enter the appropriate code from the list on the front of the form. Indicate "A" for Attempted, "C" for Conspiracy to Commit, "F" for facilitate or "S" for solicit.

Block #15: DOMESTIC VIOLENCE & VICTIM INFORMATION CODE:

Enter the appropriate code from the list on the front of the form. Indicate "D" for a crime involving domestic violence, "M" when the victim is a minor, "A" when the victim is a vulnerable adult, "L" when the victim is a law enforcement officer, "C" for a dangerous crime against a child/children.

Block #16: DESIGNATED COURT NAME/IDENTIFIER: Enter the designated court name or NCIC assigned originating identifier (ORI) for each charge.

Block #17: AMENDED TO: Enter the letter "X" in box 17, line "a"; then write amended charge(s) and sentence information on the corresponding "b" line, beginning in box 10, completing all applicable boxes through box 27.

Block #18: DISPOSITION CODE: Enter the appropriate disposition code from the following: "NF" for no complaint filed, "NR" for not referred to prosecution, or "DP" for deferred prosecution.

Block #25: DISPOSITION DATE: Enter the official disposition date (MMDDCCYY).

Block #26: AGENCY ORI MAKING DISPOSITION DECISION: The NCIC-assigned originating agency identifier (ORI) of the agency making the disposition decision.

Block #27: FURTHER EXPLANATIONS OR MODIFICATIONS: Further explanation regarding a particular charge/disposition (list the charge number) may be entered in this section.

Block #28: RIGHT INDEX FINGERPRINT: (lower right corner of the form) At the time of arrest/fingerprinting, the subject's right index fingerprint may be placed in this box. (This fingerprint is optional and not required to process the Disposition Report form.)

EXHIBIT B

DISPOSITION REPORT FORM BLOCK

COMPLETION INSTRUCTIONS FOR CRIMINAL COURTS

Block #1: SID NUMBER/AZ: If subject was previously arrested, the State Identification number may be obtained from the Arizona Computerized Criminal History (ACCH) files via terminal inquiry.

Block #2: NAME: Subject's complete name as shown on the arrest fingerprint record, which was completed for this arrest.

Block #3: DATE OF BIRTH (DOB): As shown on the arrest fingerprint record (MMDDCCYY) MM = month, DD = day, CCYY = full year. Example: 03/20/1954.

Block #4: DATE OF ARREST: As shown on the arrest fingerprint record (MMDDCCYY) MM = month, DD = day, CCYY = full year. Example: 04/20/2001.

Block #5: PCN: Processing control number (PCN) assigned for specific arrest incident via AZAFIS.

Block #6: ARRESTING AGENCY ORI: The NCIC-assigned originating agency identifier (ORI).

Block #7: ARRESTING AGENCY CASE NUMBER: The arresting agency's case number.

Block #8: BOOKING AGENCY ORI: The NCIC-assigned originating agency identifier (ORI).

Block #9: BOOKING NUMBER: The number assigned by the detention facility.

Block #10: CHARGES: Each offense charged at the time of arrest MUST be listed on line "a". Line "b" is used only for subsequent amendment to the initial arrest charge(s).

Block #11: ARIZONA REVISED STATUTE (A.R.S.) or Ordinance: Enter the correct A.R.S. number or the County/City Ordinance number for each charge (as indicated on the arrest fingerprint record.)

Block #12: DATE OF OFFENSE/VIOLATION: Enter the date the offense/violation was committed (MMDDCCYY).

Block #13: OFFENSE TYPE: Circle "M" for misdemeanor. Circle "F" for felony.

Block #14: PREPARATORY OFFENSE CODE: Enter the appropriate code from the list on the front of the form. Indicate "A" for attempted, "C" for Conspiracy to Commit, "F" for facilitate or "S" for solicit.

Block #15: DOMESTIC VIOLENCE & VICTIM INFORMATION CODE:

Enter the appropriate code from the list on the front of the form. Indicate "D" for a crime involving domestic violence, "M" when the victim is a minor, "A" when the victim is a vulnerable adult, "L" when the victim is a law enforcement officer, "C" for a dangerous crime against a child/children.

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Block #16: DESIGNATED COURT NAME/IDENTIFIER: Enter the designated court name or NCIC assigned originating identifier (ORI) for each charge.

Block #17: AMENDED TO: Enter the letter "X" in box 17, line "a"; then write amended charge(s) and sentence information on the corresponding "b" line, beginning in box 10, completing all applicable boxes through box 27.

Block #18: DISPOSITION CODE: Enter the appropriate disposition or appellate code from the list on the front of the form.

AC — Acquitted/ Not guilty
CD — Court Dismissed
DP — Deferred Prosecution
DS — Deferred Sentencing
GG — Guilty
GI — Guilty but Insane
NF — No complaint filed
NP — Nolo contendere plea
NR — Not referred for prosecution
PD — Pardoned
PM — Pending due to mental incompetency
PO — Plea to other charges
RI — Not responsible by reason of insanity

APPELLATE CODES:

AF — Affirmed
AR — Affirmed, Remanded for Re-sentencing
RR — Reversed and Remanded
RV — Reversed and Conviction Overturned
SM — Sentence Modified

Block #19: PRISON/JAIL: If the defendant was sentenced to confinement, circle "P" for prison or "J" for Jail.

Block #20: LENGTH OF CONFINEMENT: Indicate the length of confinement (in days, months, years, etc.) to which the defendant is sentenced. Example: 1yr. 2 mo.

Block #21: SENTENCE CODE: Enter the appropriate sentence code from the list on the front of the form.

CC — Concurrent
CS — Consecutive
PS — Public or Community Service
SS — Court Suspended Sentence

Block #22: PROBATION LENGTH: Indicate the length of probation in days, months, years, etc. to which the subject is sentenced. Example: 3 yrs.

Block #23: FINE: Circle "Y" for Yes, to indicate that a fine was imposed. Circle "N" for No, to indicate that a fine was not imposed.

Block #24: COURT CASE COMPLAINT NUMBER: The case number assigned by the Justice/Municipal/Superior Court.

Block #25: DISPOSITION DATE: Enter the official disposition date (MMDDCCYY).

Block #26: AGENCY ORI MAKING DISPOSITION DECISION: The NCIC-assigned originating agency identifier (ORI) of the agency making the disposition decision.

Block #27: FURTHER EXPLANATIONS OR MODIFICATIONS: Further explanation regarding a particular charge/disposition (list the charge number) may be entered in this block.

Block #28: RIGHT INDEX FINGERPRINT: (lower right corner of the form) At the time of arrest/fingerprinting, the subject's right index fingerprint may be placed in this box. (This fingerprint is optional and not required to process the Disposition Report form.)

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

PREAMBLE

- | | |
|--------------------------------------------------------------|---------------------------------------------------|
| 1. <u>Sections Affected</u>
R18-2-326
R18-2-511 | <u>Rulemaking Action</u>
Amend
Amend |
|--------------------------------------------------------------|---------------------------------------------------|
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 49-425
Implementing statutes: A.R.S. §§ 49-426 and 49-455
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**
Notice of Rulemaking Docket Opening: 10 A.A.R. 2440, June 18, 2004
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Kevin Force
Address: Department of Environmental Quality
1110 W. Washington Ave.
Phoenix, AZ 85007
Telephone: (602) 771-4480 (This number may be reached in-state by dialing 1-800-234-5677 and requesting the seven digit number.)
Fax: (602) 771-2366
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**

Summary: ADEQ is proposing to change the fees it charges for air quality permits. The fees that would be affected are fees for permit actions, administrative and emission based fees for Title V sources, inspection fees for non-Title V sources, and fees for general permits. ADEQ is seeking an immediate effective date for these rules.

Background: The Air Permits Administration Fund (APAF) was established by legislation enacted in 1992 to provide a mechanism for administration of revenues and costs for the air pollution permits program for the state of Arizona. When first established, revenues were primarily from annual emission-based fees assessed on sources subject to Title V of the Clean Air Act (40 CFR Part 70). One of the recognized equity issues related to the initial program was that the vast majority of revenues came from a relatively small number of sources while the majority of program costs were a result of activities related to permits for a large number of small sources.

ADEQ developed an updated workload analysis in 1999 of the costs associated with all components of the air quality programs and initiated a stakeholder process to develop a modified structure for revenues that would more equitably distribute the cost of the permitting programs to the sources those programs cover. The Kendall Group, Inc. was retained by some of the stakeholders to provide technical facilitation of the stakeholder debate on a new form and structure for permit fees. This stakeholder process resulted in a recommended structure that decreased revenues from annual emission-based fees (emission fees), increased revenues from annual fixed fees (based on the relative burden to the agency to administer the permits), and updated the revenue basis for processing permit applications (permit processing fees). This recommendation led to the modification of the Arizona rules for air pollution permit processing and annual fees. The new fee structure went into effect in 2002. Revenues in Fiscal Year 2003 (July 1, 2002 – June 30, 2003) were substantially lower than expected. Total expenditures in FY 2003 were \$5.1 million while revenues were only \$3.4 million. This resulted in a \$1.7 million decrease in the APAF balance from \$4.3 to \$2.6 million at the end of FY 2003. Based on the continued projected deficit, ADEQ retained The Kendall Group, Inc. to review the current and projected revenues and develop recommendations on areas that should be addressed to ensure the solvency of the APAF.

The Kendall Group, Inc. reviewed several sources of information and held numerous meetings with ADEQ management and staff to develop findings and recommendations. The Group issued a report, called “Review, Assessment and Recommendations for the Arizona Department of Environmental Quality (ADEQ) Air Permits Administration Fund (Appropriated Fund 2200)” (Kendall report). The following are the key findings and recommendations:

Findings:

 - The APAF has been, and continues to operate, in a deficit of approximately \$1.5 million annually despite reductions in expenditures of approximately \$0.7 million since 2000.

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- Revenues from annual administrative and emission fees are approximately \$0.6 million per year lower than anticipated due to major source curtailments and closures, permit cancellations, and a shift to less expensive general permits.
- Revenues from permit processing fees are \$1.7 million per year lower than expected due to fewer billable hours being available for cost recovery and some billable hours not being tracked and invoiced.

Recommendations:

- Permit processing fees should be increased from \$68.60 per hour to \$98.80 per hour to reflect the true burdened cost of providing permit processing services.
- Annual administrative and emission fees should be raised approximately 8.46 percent to make up for the effective “subsidy” that exists due to shortfall in permit fee revenues.
- Any changes to the permit fee rules should become effective as soon as possible to address the current deficit in the program.
- ADEQ should consider issuing invoices for annual administrative fees by December 1 of each year so revenues are realized early in the end of the third quarter of the fiscal year.

Based on these findings, ADEQ held 3 stakeholder meetings in the month of July to inform stakeholders of the seriousness of the problem and the Kendall report, and to discuss the upcoming proposed rule. ADEQ is therefore proposing to amend R18-2-326 and R18-2-511 and implement the recommendations noted above with an immediate effective date, as described further below, to ensure the continued solvency of the APAF.

Section by Section Explanation of significant proposed changes.

R18-2-326. Fees Related to Individual Permits: The amendments proposed in this section would make several changes to the rule. First, they would raise the permit process fee base from \$68.60 to \$98.80 per hour for all permit processing time required for a billable permit action. Second, administrative and inspection fees would be raised 8.46 percent from the current rate, (R18-326(H) authorizes inflation adjustments using the Consumer Price Index, which changes the fees by 12.7 percent from the base rate in the current rule). Third, emission fees would be raised 8.46 percent from the current CPI-adjusted rate of \$12.21 to \$13.34 (or about 12.7 percent from the base rate of \$11.75). Finally, invoices would be issued on December 1 of each year rather than January 31 so that revenues may be realized earlier in each fiscal year. Other dates and deadlines in the rule would be moved up by 60 days to reflect this new schedule.

R18-2-511. Fees Related to General Permits: The amendments proposed in this section parallel those in R18-2-326, except no inflation adjustment is made to general permit fees. Administrative fees for general permits are proposed to be increased by 8.46 percent, rounded to the nearest \$10, as shown:

General Permit Source Category	Administrative Fee
Class I Title V General Permits	Administrative fee for category from R18-2-326(C)
Class II Title V Small Source	\$500 <u>\$540</u>
Other Class II Title V General Permits	\$3,000 <u>\$3,250</u>
	Inspection Fee
Class II Non-Title V Gasoline Service Stations	\$500 <u>\$540</u>
Class II Non-Title V Crematories	\$1,000 <u>\$1,080</u>

Finally, the deadline for payment of the applicable fee was moved up about 60 days, from March 31 to February 1 of each calendar year.

Immediate Effective Date: ADEQ is requesting an immediate effective date for these rules under A.R.S. § 41-1032. A.R.S. §41-1032(A)(1) allows for an immediate effective date to preserve the public health or safety. If the APAF goes bankrupt, permitted sources will, in effect, be unregulated, thus damaging public health and safety. A.R.S. §41-1032(A)(2) allows an immediate effective date in order to avoid a violation of federal law or regulations. Section 502(b)(3) of the Clean Air Act directs states to require source owners or operators to pay a fee sufficient to cover all reasonable costs required to develop and administer the permit program required by the Act. 40 CFR 70.9(b)(1)

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requires the state permit program to establish a fee schedule that results in the collection and retention of sufficient revenues to cover the permit program costs.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

“Review, Assessment and Recommendations for the Arizona Department of Environmental Quality (ADEQ) Air Permits Administration Fund (Appropriated Fund 2200),” prepared by The Kendall Group, Inc., June 9, 2004.

This study is posted on the ADEQ web site and may be accessed by directing one’s web browser to this address: <http://www.adeq.state.az.us/function/laws/download/apaf.pdf>. The study is also available for public review in the ADEQ library at 1110 W. Washington St., Phoenix, AZ 85012.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

N/A

8. The preliminary summary of the economic, small business, and consumer impact:

A. Rule Identification

This rulemaking proposes to amend A.A.C. R18-2-326, “Fees Related to Individual Permits” and A.A.C. R18-2-511, “Fees Related to General Permits.”

ADEQ is soliciting comments on the economic impacts of this rulemaking. If you provide information or data for ADEQ to evaluate, please explain your viewpoint and the assumptions you used in your evaluation, along with appropriate examples.

ADEQ will provide a more detailed evaluation of the small business and consumer impact statement in the final rulemaking. Appropriate examples that include assumptions will be included in the final EIS evaluation.

B. Background

In 2001, ADEQ promulgated a rulemaking that revised the air quality permit fee structure and anticipated that these changes would provide adequate revenues to operate its air pollution program. A permit-fee rule is statutorily mandated providing for fees paid by sources to support the permit program development and implementation costs. (A.R.S. § 49-426(E)) The new fee structure was effective January 1, 2002 (see A.A.R. 5670). However, because revenues were discovered to be substantially lower than expected, ADEQ retained The Kendall Group, Inc. to evaluate the relationship between expenditures and revenues, and to make recommendations for the solvency of the Air Permits Administration Fund (APAF).

Total expenditures for FY-03, for example, were \$5.1 million compared to \$3.4 million in revenues, and the balance of the APAF declined from \$4.3 million to \$2.6 million. Without a change in permit fees, it was projected that revenues would continue to fall and the APAF would be in jeopardy of becoming insolvent.

Compared to expectations from restructuring the permit fees effective in January 2002, ADEQ’s revenues from annual administrative and emission fees are about \$600,000 lower. The Kendall Group, Inc. concluded that this is due to lower emissions from source curtailments and closures, permit cancellations, and sources shifting to less expensive general permits. They also found that revenues generated from permit processing fees were \$1,700,000 per year lower than expected (78 percent) due to a significant reduction in staffing, and consequently, billed hours.

C. Entities Directly Affected

The 8.46 percent increase in fees for Class I and Class II Title V sources, and Class II Non-Title V sources is expected to directly impact the approximately 725 sources permitted by ADEQ. ADEQ does not expect this rule to have a direct impact on more than 4,000 sources permitted by Maricopa, Pima, and Pinal counties, although A.R.S. § 49-112(B) allows their fees to be approximately equal to ADEQ’s, because ADEQ has no information that the counties are experiencing similar revenue shortfalls. Additional information about the categories of sources will be provided in the final EIS evaluation.

D. Potential Costs and Benefits

ADEQ expects an increase in revenues from these rule changes that will be sufficient to efficiently and effectively operate its air permit program. The overall 8.46 percent increase in administrative fees, emission-based fees, and inspection fees for ADEQ sources, and fees for general permits, and a 44 percent increase in the permit processing fee is expected to adequately fund ADEQ’s air permit program for the near future.

Regulatory Agencies

Projected FY 2004 revenues from permitted sources are lower than expected. Part of this shortfall was due to an unrealistic allocation of billable hours for permit writers, a reduction in technical staff, a general economic downturn that

started in 2001 following a ten-year economic expansion, and sources shifting from individual permits to general permits.

According to The Kendall Group, Inc., revenues from the air permit program are expected to increase by about \$700,000 with the restructured permit fees.¹ ADEQ is not expected to be negatively impacted by these proposed rule changes because they do not impose any new burdens upon the Agency. A benefit to ADEQ is the proposed shift in the due dates for fee payments 60 days earlier than currently is the requirement. This should result in revenues accruing early in the third quarter of the fiscal year rather than at the end of the third and beginning of the fourth quarter, as is currently the case.

Other agencies are not expected to be directly impacted. There is no information that the counties operating their own air quality programs would be indirectly impacted. County fees must be less than or approximately equal to the state fee for similar permits under A.R.S. § 49-112(B). Current information is that county fees are adequate to support their permitting programs.

Regulated Community

Entities impacted include Class I Title V sources (e.g., cement plants, combustion boilers, compressor stations, lime plants, mines, paper plants, smelters, utilities, and others); Class II Title V sources (synthetic minors, other stationary sources, portable sources, and small sources); Class II Non-Title V sources (stationary, portable sources, gasoline service stations, and crematories).

The objective of amending the permit fees (emission-based, administrative, inspection, and processing) is to balance expenditures with revenues. As a result, the economic impact on the sources as an aggregate should be at least \$700,000 in additional fees that they will need to pay to ADEQ. This represents the incremental cost burden to the regulated community.

At least partially offsetting this incremental cost, the regulated community is avoiding the potential impacts of failure of the Air Permits Administration Fund. Under the Title V of the Clean Air Act and federal implementing regulations, EPA would be forced to intervene if the Fund failed and ADEQ was no longer able to staff and operate its permitting programs. ADEQ could lose authority to operate the Title V program, and EPA would operate the program, charging and collecting the fees it needed to operate the program from San Francisco. In addition, uncertainty related to permitting would discourage investment in new and expanded industrial activity. Finally, the permit fees under this rule fund program operations such as inspections. A lack of inspections would produce an uneven playing field, with no penalties for noncompliance, in effect penalizing those who comply.

This rulemaking is not expected to impact either short or long-term employment, production, or industrial growth in Arizona. ADEQ expects no facility closures or reductions in output due to increased fees.

Consumers and Public

ADEQ expects a minimal impact to consumers and the general public. Although some sources may absorb the higher cost of doing business, others may pass-on the higher costs to consumers, depending on market conditions and elasticities of buyers and sellers.² Adjusting revenue streams for the Air Quality Division will facilitate timely issuance of air pollution control permits to further improve air quality and achieve national public health standards with appropriate permit conditions. The well-functioning air permits program will more realistically balance expenditures with revenues from sources of air pollution, and provide a better business climate which improves employment opportunities.

E. Potential Impacts to Small Businesses

ADEQ has considered a variety of methods to reduce the impact of this rule on small businesses, as prescribed in A.R.S. §§ 41-1035 and 41-1055(B)(5)(c). These methods include: establishing less stringent compliance or reporting requirements, establishing less stringent schedules or deadlines for compliance or reporting requirements, consolidating or simplifying the rulemaking's reporting requirements, establishing performance requirements to replace design or operational standards, and exempting small businesses from some or all of the rule requirements. The statutory directive that permit fees must be related to costs prohibits ADEQ from implementing almost any of these methods for small businesses. As a result, permit fees are based on regulatory costs rather than size of the source.

One possible exception has already been implemented. As evident in R18-2-511, authority to operate under general permits is available at a somewhat reduced cost when compared to individual permits. General permits tend to be used by smaller sources. In addition, no source under a general permit is subject to the permit processing fee.

Endnotes

¹ An estimated increase of \$701,900 in permit fee revenues was derived from the Kendall report by computing the difference between 2004 "actual" revenues and 2004 "actuals" after applying the restructured permit fees. The calculations included emission-based fees for Class I Title V sources (\$63,400); permit processing billable hours @ 13,875 for Title V and Non-Title V sources, including amendments (\$419,000); Class I Title V flat fee (\$67,300); Class II Title V sources (\$51,700); and Class II Non-Title V sources (\$100,500).

Notices of Proposed Rulemaking

² Elasticities refers to the sensitivity of price to changes in demand and supply. Once elasticity coefficients have been calculated, they can be used to predict the consequence of price changes, including the probability of businesses passing-on higher costs to consumers.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: David Lillie, Economist
Address: Department of Environmental Quality
1110 W. Washington Ave.
Phoenix, AZ 85007
Telephone: (602) 771-4461 (This number may be reached in-state by dialing 1-800-234-5677 and requesting the seven digit number)
Fax: (602) 771-2366

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Date: September 13, 2004
Time: 3:00 p.m.
Location: Department of Environmental Quality
1110 W. Washington Ave., Conference Room 250
Phoenix, AZ
Close of Comment: 5:00 p.m., September 13, 2004

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

N/A

12. Incorporations by reference and their location in the rules:

N/A

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL**

ARTICLE 3. PERMITS AND PERMIT REVISIONS

Section

R18-2-326. Fees Related to Individual Permits

ARTICLE 5. GENERAL PERMITS

Section

R18-2-511. Fees Related to General Permits

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-326. Fees Related to Individual Permits

A. Source Categories. The owner or operator of a source required to have an air quality permit from the Director shall pay the fees described in this Section unless authorized to operate under a general permit issued under Article 5. The fees are based on a source being classified in one of the following three categories:

1. Class I Title V sources are those required or that elect to have a permit under R18-2-302(B)(1).
2. Class II Title V sources are those required to have a permit under R18-2-302(B)(2) and for which either R18-2-302(B)(2)(a)(i) or (ii) applies.
3. Class II Non-Title V sources are those required to have a permit under R18-2-302(B)(2) and for which neither R18-2-302(B)(2)(a)(i) nor (ii) applies.

B. Fees for Permit Actions. The owner or operator of a Class I Title V source, Class II Title V source, or Class II Non-Title V source shall pay to the Director ~~\$66~~ **\$98.80** per hour, adjusted annually under subsection (H), for all permit processing time required for a billable permit action. Upon completion of permit processing activities other than issuance or denial of

Notices of Proposed Rulemaking

the permit or permit revision, the Director shall send notice of the decision to the applicant along with a final itemized bill. The maximum fee for any billable permit action for a non-Title V source is \$25,000. Except as provided in subsection (G), the Director shall not issue a permit or permit revision until the final bill is paid in full.

- C. Class I Title V Fees. The owner or operator of a Class I Title V source that has undergone initial startup by January 1 shall annually pay to the Director an administrative fee plus an emissions-based fee as follows:

1. The applicable administrative fee from the table below, as adjusted annually under subsection (H). The fee is due by ~~March 31~~ February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

Class I Title V Source Category	Administrative Fee
Aerospace	\$12,900 <u>\$14,540</u>
Cement Plants	\$39,500 <u>\$44,520</u>
Combustion/Boilers	\$9,600 <u>\$10,820</u>
Compressor Stations	\$7,900 <u>\$8,900</u>
Electronics	\$12,700 <u>\$14,320</u>
Expandable Foam	\$9,100 <u>\$10,260</u>
Foundries	\$12,100 <u>\$13,640</u>
Landfills	\$9,900 <u>\$11,150</u>
Lime Plants	\$37,000 <u>\$42,050</u>
Copper & Nickel Mines	\$9,300 <u>\$10,480</u>
Gold Mines	\$9,300 <u>\$10,480</u>
Mobile Home Manufacturing	\$9,200 <u>\$10,370</u>
Paper Mills	\$12,700 <u>\$14,310</u>
Paper Coaters	\$9,600 <u>\$10,820</u>
Petroleum Products Terminal Facilities	\$14,100 <u>\$15,890</u>
Polymeric Fabric Coaters	\$12,700 <u>\$14,310</u>
Reinforced Plastics	\$9,600 <u>\$10,820</u>
Semiconductor Fabrication	\$16,700 <u>\$18,830</u>
Copper Smelters	\$39,500 <u>\$44,520</u>
Utilities - Natural Gas	\$10,200 <u>\$11,490</u>
Utilities - Fossil Fuel Except Natural Gas	\$20,200 <u>\$22,760</u>
Vitamin/Pharmaceutical Manufacturing	\$9,800 <u>\$11,050</u>
Wood Furniture	\$9,600 <u>\$10,820</u>
Others	\$9,900 <u>\$11,150</u>
Others with Continuous Emissions Monitoring	\$12,700 <u>\$14,320</u>

2. An emissions-based fee of ~~\$11.75~~ \$13.24 per ton of actual emissions of all regulated pollutants emitted during the previous calendar year ending 12 months earlier. The fee is adjusted annually under subsection (d) and due by ~~March 31~~ February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.
 - a. For purposes of this Section, "actual emissions" means the quantity of all regulated pollutants emitted during the calendar year, as determined by the annual emissions inventory under R18-2-327.
 - b. For purposes of this Section, regulated pollutants consist of the following:
 - i. Nitrogen oxides and any volatile organic compounds;
 - ii. Conventional air pollutants, except carbon monoxide and ozone;
 - iii. Any pollutant that is subject to any standard promulgated under Section 111 of the Act, including fluorides, sulfuric acid mist, hydrogen sulfide, total reduced sulfur, and reduced sulfur compounds; and
 - iv. Any federally listed hazardous air pollutant.
 - c. For purposes of this Section, the following emissions of regulated pollutants are excluded from a source's actual emissions:
 - i. Emissions of any regulated pollutant from the source in excess of 4,000 tons per year;
 - ii. Emissions of any regulated pollutant already included in the actual emissions for the source, such as a federally listed hazardous air pollutant that is already accounted for as a VOC or as PM₁₀;

Notices of Proposed Rulemaking

- iii. Emissions from insignificant activities listed in the permit application for the source under R18-2-304(E)(8);
- iv. Fugitive emissions of PM₁₀ from activities other than crushing, belt transfers, screening, or stacking; and
- v. Fugitive emissions of VOC from solution-extraction units.
- d. The Director shall adjust the rate for emission-based fees every ~~January 1~~ November 1, beginning on ~~January 1, 2003~~ the effective date of this rule, by multiplying ~~\$11.75~~ \$13.24 by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year ~~2001~~ 2004. The Consumer Price Index for any year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of that year.

D. Class II Title V Fees. The owner or operator of a Class II Title V source that has undergone initial startup by January 1 shall pay the applicable administrative fee from the table below, adjusted under subsection (H), for that calendar year, and annually thereafter. The fee is due by ~~March 31~~ February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

CLASS II Title V Source Category	Administrative Fee
Synthetic minor sources, except portable sources	Administrative fee from Class I Title V table for category
Stationary	\$5,000 <u>\$5,640</u>
Portables	\$5,000 <u>\$5,640</u>
Small Source	\$500 <u>\$560</u>

E. Class II Non-Title V Fees. The owner or operator of a Class II Non-Title V source that has undergone initial startup by January 1 shall pay the applicable inspection fee from the table below, adjusted under subsection (H), for that calendar year, and annually thereafter. The fee is due by ~~March 31~~ February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

Class II Non-Title V Source Category	Inspection Fee
Stationary	\$3,250 <u>\$3,660</u>
Portables	\$3,250 <u>\$3,660</u>
Gasoline Service Stations	\$500 <u>\$560</u>

F. The Director shall mail the owner or operator of each source an invoice for all fees due under subsections (C), (D), or (E) by ~~January 31~~ December 1.

G. Any person who receives a final itemized bill from the Director under this Section for a billable permit action may request an informal review of the hours billed and may pay the bill under protest. If the bill is paid under protest, the Director shall take final action on the permit or permit revision.

1. The request shall be made in writing, and received by the Director within 30 days of the date of the final bill. Unless the Director and person agree otherwise, the informal review shall take place within 30 days after the Director's receipt of the request. The Director shall arrange the date and location of the informal review with the person at least 10 business days before the informal review. The Director shall review whether the amounts of time billed are correct and reasonable for the tasks involved. The Director shall mail his or her decision on the informal review to the person within 10 business days after the informal review date.
2. The Director's decision after informal review shall become final unless, within 30 days after person's receipt of the informal review decision, the person requests a hearing under R18-1-202.

H. The Director shall adjust the hourly rate every ~~January 1~~ November 1, to the nearest ten cents per hour, beginning on ~~January 1, 2003~~ the effective date of this rule, by multiplying ~~\$66~~ \$98.80 by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year ~~2001~~ 2004. The Director shall adjust the administrative or inspection fees listed in subsections (C), (D), and (E) every ~~January 1~~ November 1, to the nearest \$10, beginning on ~~January 1, 2003~~ the effective date of this rule, by multiplying the administrative or inspection fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year ~~2001~~ 2004. The Consumer Price Index for any year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of that year.

Notices of Proposed Rulemaking

- I.** An applicant for a Class I or Class II permit or permit revision may request that the Director provide accelerated processing of the application by providing the Director written notice 60 days before filing the application. The request shall be accompanied by an initial fee of \$15,000. The fee is non-refundable to the extent of the Director's costs for accelerating the processing if the Director undertakes the accelerated processing described below:
1. If an applicant requests accelerated permit processing, the Director may, to the extent practicable, undertake to process the permit or permit revision in accordance with the following schedule:
 - a. For applications for initial Class I and II permits under R18-2-302 or significant permit revisions under R18-2-320, the Director shall issue or deny the proposed permit or permit revision within 120 days after the Director determines that the application is complete.
 - b. For minor permit revisions under R18-2-319, the Director shall issue or deny the permit revision within 60 days after receiving a complete application.
 2. At any time after an applicant requests accelerated permit processing, the Director may require additional advance payments based on the most recent estimate of additional costs.
 3. Upon completion of permit processing activities but before issuance or denial of the permit or permit revision, the Director shall send notice of the decision to the applicant along with a final bill. The maximum fee for any billable permit action for a non-Title V source is \$25,000. The final bill shall include all regular permit processing and other fees due, and, in addition, the difference between the cost of accelerating the permit application, including any costs incurred by the Director in contracting for, hiring, or supervising the work of outside consultants, and all advance payments submitted for accelerated processing. In the event all payments made exceed actual accelerated permit costs, the Director shall refund the excess advance payments. Nothing in this subsection affects the public participation requirements of R18-2-330, or EPA and affected state review as required under R18-2-307 or R18-2-319.
- J.** Inactive Sources. The owner or operator of a permitted source that has undergone initial startup but was shut down for the entire preceding calendar year shall pay 50 percent of the administrative or inspection fee required under subsection (C), (D), or (E). The owner or operator of a source claiming inactive status under this subsection shall submit a letter to the Director by ~~December 15~~ October 15 of the year prior to the billing year. Termination of a permit does not relieve a source of any past fees due.
- K.** Transition.
1. Subsections (A) through (J) of this Section are effective ~~January 1, 2002~~ on the effective date of this rule. The first administrative or inspection fees are due on ~~March 31, 2002~~ February 1, 2005.
 2. Except as provided in subsection (b), all fees incurred after ~~January 1, 2002~~ the effective date of this rule are payable in accordance with the rates contained in this Section.
 - a. Emission-based fees for calendar year ~~2000~~ 2004 shall be billed at ~~\$11.75~~ \$13.24 per ton and be due ~~March 31, 2002~~ February 1, 2005.
 - b. The hourly rates and maximum fees for a new permit or permit revision are those in effect when the application for the permit or revision is determined to be complete.
 - c. Fees accrued but not yet paid before the effective date of this Section remain as obligations to be paid to the Department.

ARTICLE 5. GENERAL PERMITS

R18-2-511. Fees Related to General Permits

- A.** Permit Processing Fee. The owner or operator of a source that applies for authority to operate under a general permit shall pay to the Director \$500 with the submittal of the application. This fee applies to the owner or operator of any source who intends to continue operating under the authority of a general permit that has been proposed for renewal.
- B.** Administrative or Inspection Fee. The owner or operator of a source with authority to operate under a general permit shall pay, for each calendar year, the applicable administrative or inspection fee from the table below, by ~~March 31~~ February 1 or 60 days after the Director mails the invoice, whichever is later.

General Permit Source Category	Administrative Fee
Class I Title V General Permits	Administrative fee for category from R18-2-326(C)
Class II Title V Small Source	\$500 \$540
Other Class II Title V General Permits	\$3,000 \$3,250
	Inspection Fee
Class II Non-Title V Gasoline Service Stations	\$500 \$540
Class II Non-Title V Crematories	\$1,000 \$1,080
Other Class II Non-Title V General Permits	\$2,000 \$2,170

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

1. Sections Affected

R20-4-1501
R20-4-1503
R20-4-1506
R20-4-1507
R20-4-1508
R20-4-1509
R20-4-1510
R20-4-1511
R20-4-1512
R20-4-1513
R20-4-1514
R20-4-1515
R20-4-1516
R20-4-1517
R20-4-1518
R20-4-1519
R20-4-1520
R20-4-1521

Rulemaking Action

Amend
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2. The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 6-123(2)

Implementing statutes: A.R.S. §§ 6-123(1), 32-1021, 32-1023, 32-1051, 32-1055

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening, 8 A.A.R. 2177, May 17, 2002

Notice of Rulemaking Docket Opening, 10 A.A.R. 3193, August 13, 2004

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: John P. Hudock
Address: State Banking Department
2910 N. 44th St., Suite 310
Phoenix, AZ 85018
Telephone Number: (602) 255-4421, Ext. 167
Fax: (602) 381-1225
E-mail: jhudock@azbanking.com

5. An explanation of the rules, including the agency's reasons for initiating the rules:

These Sections control the conduct of the collection agency business in Arizona. On November 7, 2000, the Council approved the department's then current 5-year-rule-review report. In the approved report the department promised to revise or repeal several Sections of Article 15. This rulemaking is to fulfill that promise.

In particular, all but one of these Sections will be amended to streamline the writing style and enhance the clarity of each Section's language.

This rulemaking also repeals one Section. It repeals R20-4-1517 for several reasons. First, the rule is not enforced. Second, the agency lacks statutory authority to make the rule. Third, the rule is an unconstitutional violation of the Separation of Powers Doctrine. Fourth, the issue of whether a collection agency is a "holder in due course" in a given factual situation is not likely to be a matter the courts would decide by reliance on an administrative pronouncement. The status of "holder in due course" is a question of fact to be determined from an analysis of the facts rather than from a weighing of an agency's quasi-legislative acts.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where

the public may obtain or review each study, all data underlying each study, and any analysis of each study, and other supporting material:

The department does not propose to rely on any study as an evaluator or justification for the rules.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

A. The Banking Department

The department will incur the costs of completing this rulemaking and of putting the revised Sections into effect. It expects to receive the offsetting benefits of a more modern set of regulations, accurately describing current best practices, and a resultant ease of communication with all licensees.

B. Other Public Agencies

The State will incur normal publishing costs incident to rulemaking.

C. Private Persons and Businesses Directly Affected

Costs of services will not increase to any measurable degree; nor should these revisions increase any collection agency's cost of doing business in compliance with these rules.

D. Consumers

No measurable effect on consumers is expected.

E. Private and Public Employment

The department expects no measurable effect on private and public employment.

F. State Revenues

This rulemaking will not change state revenues.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: John P. Hudock
Address: Banking Department
2910 N. 44th St., Suite 310
Phoenix, AZ 85018
Telephone: (602) 255-4421, Ext. 167
Fax: (602) 381-1225
E-mail: jhudock@azbanking.com

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

No oral proceeding is scheduled. The Department will schedule an oral proceeding on the proposed rules if it receives a written request for a proceeding within 30 days after the publication date of this notice, under the provisions of A.R.S. § 41-1023(C). Send requests for an oral proceeding to the Department personnel listed in items #4 and #9. The Department invites and will accept written comments on the proposed rules or the preliminary economic, small business, and consumer impact statement. Submit comments during regular business hours, at the address listed in item #9, until the close of the record for this proposed rulemaking. The record will close on the 31st day following publication of this notice, unless the department schedules an oral proceeding.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

There is no material incorporated by reference in these rules.

13. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 15. COLLECTION AGENCIES

Section

- R20-4-1501. Definitions
- R20-4-1503. Reports
- R20-4-1506. Articles of Incorporation; Bylaws; Organizing Governing Documents
- R20-4-1507. Representations of Collection Agency's Identity of Licensee
- R20-4-1508. Representations of the Law
- R20-4-1509. Representations as to Fees, Costs, and Legal Proceedings; Disinterested Counsel Required
- R20-4-1510. Representations as to Rights Waived or Remedies Available
- R20-4-1511. Prohibition of Harassment
- R20-4-1512. Contacts with Debtors and Others
- R20-4-1513. Cessation of Communication Contact with the Debtor
- R20-4-1514. Disclosure of Information to Debtor
- R20-4-1515. Aiding and Abetting
- R20-4-1516. Advertising
- R20-4-1517. ~~Holder in Due Course~~ Repealed
- R20-4-1518. Agreements with Clients
- R20-4-1519. Licensee Names and Control
- R20-4-1520. Representations of Collection Agency Employees' Identity or Position
- R20-4-1521. Duty of Investigation

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 15. COLLECTION AGENCIES

R20-4-1501. Definitions

In this Article, unless the context otherwise requires:

"Account" means a contractual arrangement between a client and a collection agency that obligates the collection agency to attempt to collect one or more debts on the client's behalf.

"Active Manager" means the active manager person who is actually in charge active management of the conducting conduct of the office and collection agency's business of any licensee as defined herein, and who meets the qualifications set forth listed in A.R.S. § 32-1023(A).

1. "Client" means any a person who has contracted with hired a collection agency with regard to the collection by the collection agency of collect any a debt for such person.

2. "Collection agency" means all persons required to obtain a collection agency license under Chapter 9, Title 32, Arizona Revised Statutes has the meaning in A.R.S. § 32-1001(A)(2).

"Contact" means to communicate with, and includes attempted communications.

3. "Credit bureau" or and "credit reporting agency" means any person engaged exclusively in the business of gathering, recording, and disseminating favorable, as well as unfavorable, information about relative to the credit-worthiness, financial responsibility, paying habits, and character of persons being considered for credit extension, so that a prospective creditor may be able to make a sound decision in the extension of credit.

4. "Creditor" means any a person who offers or extends credit creating a debt, or to whom a debt is owed , but such . The term does not include any a person to the extent that he that receives an assignment or transfer of a defaulted debt in default solely for the purpose of facilitating collection of such use in collecting the debt for another someone else.

5. "Debt" means any a debtor's actual or claimed obligation or alleged obligation, of a debtor to pay money, whether or not such the obligation has been reduced to judgment.

6. "Debtor" means any a person obligated, or allegedly obligated, to pay a debt. The term also means a person claimed to be obligated to pay a debt.

7. "Licensee" means the person to whom a license has been issued pursuant to A.R.S. § 32-1026.

8.

9. "Superintendent" means the State Superintendent of Banks, or his authorized agent has the meaning in A.R.S. § 6-851.

Notices of Proposed Rulemaking

R20-4-1503. Reports

- A. A ~~licensee~~ collection agency shall notify the Superintendent in writing of any change in the officers, directors, partners, or active manager of the ~~licensee~~ collection agency ~~within not more than ten days of such after the change.~~ With the notice, the collection agency shall provide the Superintendent with and shall at the same time file a Statement of Personal History for each ~~such~~ new officer, director, partner, or active manager on the a form ~~prescribed in R20-4-1410~~ obtained from the Department.
- B. A ~~licensee~~ collection agency shall notify the Superintendent in writing of any change in its place of business ~~within ten not more than 10 days of such after the change.~~

R20-4-1506. Articles of Incorporation; Bylaws ~~Governing~~ Organizing Documents

- ~~A. Each corporate licensee shall file with the Superintendent one copy, certified by an officer of the licensee, of each amendment to the articles of incorporation and bylaws if any of the licensee, within ten days after the amendment has been adopted.~~
- ~~B. Each noncorporate licensee shall file with the Superintendent one copy, certified by the licensee or a partner or manager thereof, of each amendment to the partnership agreement or other governing documents under which the licensee conducts business, within ten days after the amendment has been adopted.~~
- A. A collection agency organized as a corporation shall file with the Superintendent a copy of each amendment to its articles of incorporation within 30 days after the amendment is adopted. Before filing with the Superintendent, an officer of the collection agency shall:
1. Certify the copy filed in compliance with this Section, in writing, signed by the certifying officer, attesting to the completeness, accuracy, and authenticity of the certified copy; and
 2. Ensure the copy bears a stamp affixed by the Arizona Corporation Commission to evidence filing with the Commission.
- B. A collection agency organized as a corporation shall file with the Superintendent a copy of each amendment to its bylaws within 10 days after the amendment is adopted. An officer of the collection agency shall certify the copy filed in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.
- C. A collection agency not organized as a corporation shall file with the Superintendent a copy of each amendment to its organizing documents within 10 days after the amendment is adopted. A partner, active manager, or agent of the collection agency shall certify the copy filed in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.

R20-4-1507. Representations of Collection Agency's ~~Identity of Licensee~~

~~Each collection agency shall at all times in its contacts with its debtors, whether such contacts are written or oral, represent itself as a collection agency, but it shall not represent, either directly or indirectly, that it is a credit reporting agency or credit bureau when it is not such an entity, nor shall it represent, either directly or indirectly, that it is a law enforcement agency or that it is a law firm.~~

In all communications with debtors, either orally or in writing, all the following rules apply:

1. A collection agency shall represent itself as a collection agency.
2. A collection agency shall not claim to be a credit reporting agency or credit bureau if it is not.
3. A collection agency shall not claim to be a law enforcement agency.
4. A collection agency shall not claim to be a law firm.

R20-4-1508. ~~Representation~~ Representations of the Law

~~A collection agency shall not misrepresent to a debtor the state of the law, shall not send to any debtor any written material simulating legal process, and shall not represent or imply that the debtor is or may be subject to criminal prosecution or arrest as a result of his failure to pay the debt.~~

A collection agency shall not:

1. Misrepresent the state of the law to a debtor.
2. Send a debtor written material that simulates legal process, or
3. Represent or imply that a debtor is, or may be, subject to criminal prosecution or arrest because of a failure to pay the debt.

R20-4-1509. Representations as to Fees, Costs and Legal Proceedings; Disinterested Counsel Required; Representation by In-House Counsel Permitted

~~A collection agency shall not threaten to collect or attempt to collect any attorney's fee, collection cost or other fee not provided for in the contract establishing the debt between the debtor and his creditor, and a collection agency shall neither inform a debtor that legal proceedings against him have been initiated in court when, in fact, they have not, nor shall a collection agency threaten to institute legal proceedings or threaten to turn the account over to a lawyer when, in fact, such action is not then intended. A collection agency shall not file a lawsuit against a debtor unless such a lawsuit is filed by an attorney who has no personal or financial interest in that collection agency.~~

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- A. A collection agency shall neither threaten to collect, nor attempt to collect, an attorney's fee, collection cost, or other fee that the debtor is not obliged to pay under the debtor's contract with the collection agency's creditor client.
- B. A collection agency shall not tell a debtor that legal proceedings have been started unless, in fact, a lawsuit has been filed against the debtor.
- C. A collection agency shall not threaten to start legal proceedings against a debtor unless the collection agency actually intends, at the time of the threat, to sue.
- D. A collection agency shall not threaten to turn an account over to a lawyer unless the collection agency actually intends to do so at the time of the threat.
- E. A collection agency shall not sue a debtor unless the collection agency is represented in the suit by a lawyer admitted to practice in Arizona who has no personal or financial interest in the collection agency. A collection agency may use a lawyer who works as a collection agency employee as its litigation counsel if that lawyer meets all the requirements of this subsection.

R20-4-1510. Representations as to Rights Waived or Remedies Available

~~A collection agency shall not inform a debtor that, as a result of his failure to contact the collection agency, the debtor has waived, or will have waived, any right or defense legally due him, or that the collection agency may, by any process, circumvent the legal process, or otherwise misrepresent to the debtor any remedies available to the collection agency.~~

- A. A collection agency shall not tell a debtor that the debtor waives any legal right or legal defense by a failure to contact the collection agency.
- B. A collection agency shall not tell a debtor that the collection agency has the power or right to bypass the legal process.
- C. A collection agency shall not misrepresent the remedies available to the collection agency.

R20-4-1511. Prohibition of Harassment

~~A collection agency shall not engage in unauthorized or oppressive tactics designed to harass the debtor or others to pay any debt, including the use of any language, written or oral, tending to ridicule, disgrace or humiliate, or tending to imply, or actually implying, that the debtor is guilty of fraud or other crime. A collection agency shall not permit its agents, employees, representatives, or officers to employ obscene or abusive language against a debtor in connection with the attempt to collect any debt. A collection agency shall be liable for all the unlawful acts of its agents, employees, representatives or officers as provided for under A.R.S. § 32-1056(B).~~

- A. A collection agency shall not use oppressive tactics to harass any person to pay a debt.
- B. A collection agency shall not use written or oral communications to ridicule, disgrace, or humiliate any person.
- C. A collection agency shall not state or imply in written or oral communications that any person is guilty of fraud or any other crime.
- D. A collection agency shall not permit its agents, employees, representatives, debt collectors, or officers to use obscene or abusive language in efforts to collect a debt.
- E. A collection agency or its agents, employees, representatives or officers are subject to penalties listed in A.R.S. § 32-1056(B) for any violation of this Article, as well as other liabilities imposed under any other provision of law.

R20-4-1512. Contacts with Debtors and Others

~~If a collection agency contacts, or attempts to contact, a debtor by telephone in connection with the collection of a debt, such contact or attempt shall be made during reasonable hours only. A collection agency shall not threaten to contact, or contact, a debtor's neighbors, friends, relatives, employers, or other third parties to inform them of the debt, to ask them to pressure or coerce the debtor into paying the debt, or to ask that they, themselves, pay the debt where they are not legally obligated to pay the debt. A collection agency shall not contact a debtor at his place of employment unless a reasonable attempt has been made to first contact the debtor at his place of residence, and such attempt has failed. This rule shall not be construed, however, to prevent the lawful service upon third parties, including employers, of any writ of garnishment obtained after judgment has been rendered against the debtor for the debt being collected.~~

- A. A collection agency shall contact a debtor by telephone only during reasonable hours. A collection agency shall make a reasonable attempt to contact a debtor at the debtor's residence. A collection agency may contact a debtor at the debtor's place of employment if a reasonable attempt to contact the debtor at the debtor's residence has failed.
- B. A collection agency shall not contact a third party including a debtor's friend, relative, neighbor, or employer and:
 - 1. Inform the third party of the debt;
 - 2. Ask the third party to pressure the debtor into paying the debt, or;
 - 3. Ask the third party to pay the debt, unless the third party is legally obligated to pay the debt.
- C. A collection agency shall not threaten to contact a third party listed in subsection (B) for any purpose listed in subsection (B).
- D. Despite the other provisions of this Section, a collection agency may make lawful service on third parties, including employers, of a writ of garnishment or other writ in aid of execution after judgment has been entered against a debtor.

R20-4-1513. Cessation of Communication ~~Contact~~ with the Debtor

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- A.** A collection agency shall cease all contacts, direct or indirect, with the debtor if and when the debtor informs the collection agency that he is represented by an attorney and that further communications relative to the debt should be directed to such attorney. If, upon contacting such attorney, it is discovered that no bona fide attorney-client relationship exists, the collection agency may resume lawful contacts with the debtor.
- B.** If a debtor notifies a debt collector in writing that the debtor refuses to pay a debt or that the debtor wishes the debt collector to cease further communication with the debtor, the debt collector shall not communicate further with the debtor with respect to such debt, except:
1. To advise the debtor that the debt collector's further efforts are being terminated;
 2. To notify the debtor that the debt collector or creditor may invoke special remedies which are ordinarily invoked by such debt collector or creditor; or
 3. Where applicable, to notify the debtor that the debt collector or creditor intends to invoke a specified remedy. If such notice from the debtor is made by mail, notification shall be complete upon receipt.
- A.** A collection agency shall stop contacting a debtor if the debtor tells the collection agency that the debtor is represented by a lawyer and wants the collection agency to communicate with the debtor through that lawyer. The collection agency may later contact the debtor if the collection agency contacts the lawyer named by the debtor and learns that the lawyer does not represent the debtor.
- B.** A collection agency shall stop contacting a debtor if the debtor gives the collection agency written notice that the debtor:
1. Refuses to pay the debt, or;
 2. Wants the collection agency to stop all further communication with the debtor.
- C.** Despite the provisions of subsection (B), a collection agency may contact a debtor to tell the debtor that the collection agency or the creditor:
1. Has stopped trying to collect the debt, or
 2. May invoke specific remedies that are customarily used by the collection agency or the creditor.
- D.** The debtor's written notice under subsection (B) is effective upon receipt by the collection agency if delivered by mail.

R20-4-1514. Disclosure of Information to Debtor

A collection agency must disclose to the debtor from whom it is attempting to collect the debt the name of the creditor, the time and place of the creation of the debt, the merchandise, services or other things of value underlying the debt, and the date when the account was turned over to the collection agency by the creditor. A debtor shall have the right of access to a collection agency's books and records concerning the debtor or the debt. Upon request, the collection agency shall provide to the debtor without cost, copies of any document relevant to the debt or its collection.

- A.** During any communication with the debtor, a collection agency shall tell the debtor:
1. The name of the creditor;
 2. The time when, and the place where, the debtor agreed to pay the debt;
 3. The merchandise, services, or other value provided in exchange for the debt; and
 4. The date when the account was turned over to the collection agency by the creditor.
- B.** A collection agency shall give the debtor access to any of the collection agency's records that contain the information listed in subsection (A).
- C.** At the debtor's request, the collection agency shall give the debtor, free of charge, a copy of any document from its records that contains the information listed in subsection (A).

R20-4-1515. Aiding and Abetting

No person aid or abet, directly or indirectly, any other person in evading or violating any of the provisions of this Article or any of the provisions of Title 32, Arizona Revised Statutes.

A collection agency shall not help or encourage any other person to evade or violate any provision of:

1. This Article, or
2. A.R.S. Title 32, Chapter 9.

R20-4-1516. Advertising

No collection agency shall, by the use of any letterhead, advertisement, agreement, form, circular or other printed matter, or otherwise, convey the impression that it is vouched for or is the Superintendent of an agency or instrumentality of the state of Arizona, or that it is authorized to practice law.

A collection agency shall not use any form of communication to state or imply that it is:

1. Approved, bonded by, or affiliated with the state of Arizona;
2. A state agency;
3. The director of any state agency; or
4. Authorized to practice law.

R20-4-1517. Holder in Due Course Repealed

A licensee shall not be deemed a holder in due course even if he is an assignee for value, or otherwise gives value for the debt.

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R20-4-1518. Agreements with Clients

All accounts whereby one or more claims for a debt or debts are placed for collection with a collection agency by a client, shall be set forth in a written agreement between client and collection agency, or shall be set forth in the form of a written acknowledgment of every account assigned, whether there be one or more claims. The written agreement or written acknowledgment shall be specific, intelligible, and unambiguous and shall set forth in full the parties, terms, rates and/or conditions upon which the collection is undertaken. The terms of the written agreement or written acknowledgment shall not violate the laws governing the unauthorized practice of law.

A collection agency's records shall document each client's account in writing. The records for an account shall include either a written agreement between the client creditor and the collection agency, or a written direction from the creditor to the collection agency concerning a specific debt placed for collection. The collection agency shall keep records that are specific, easily understood, and unambiguous. A provision of a written agreement or written direction that suggests the collection agency has authority to represent the client in court or to practice law in any other way is void and prohibited by this Section. The records for an account shall separately state:

1. The names of the parties to the agreement or written direction.
2. The terms or rate of compensation paid to the collection agency.
3. The length of time the agreement or written direction is intended to be in effect, and
4. Any conditions regarding collection of a particular debt.

R20-4-1519. Licensee Names and Control

No license shall be issued in any name which may be confused with, or which is similar to, any federal, state, county or municipal governmental function or agency, or in any name which may tend to describe any business function or enterprise not actually engaged in by the applicant, or in any name which is the same as, or similar to, that of any existing licensee as would otherwise tend to be deceptive or misleading. The foregoing shall not necessarily preclude the use of a name which may be followed by a geographically descriptive title which would distinguish it from a similar name licensed but operating in a different geographical area. No licensee shall do business under more than one name, under the same license.

A. The department shall not issue a license with a name that is:

1. Deceptively similar to, or may be confused with, any federal, state, county, or municipal government function or agency;
2. Descriptive of any business activity that the applicant does not actually conduct;
3. The same as, or similar to, the name of any existing collection agency, or;
4. Otherwise deceptive or misleading.

B. The department may permit the use of a name otherwise prohibited under subsection (A)(3) based on its analysis of whether the name includes geographic or other information that distinguishes it from the other collection agency.

C. A collection agency shall apply for and obtain a separate license for each business name it intends to use in Arizona.

R20-4-1520. Representations of Identity ~~or Position of~~ ; Collection Agency Employees

A. ~~collection agency or licensee shall not allow its agent, representative, employees or officers to represent other than their true position with the collection agency, or to claim or imply that they are attorneys if in fact they are not or to claim that they are public officials, peace officers or any other third party other than their true position, debt collector.~~

B. ~~Before using a name other than his true name while engaged in the collection of a claim, a licensee shall set forth in a separate record of the agency the following:~~

1. ~~True name of debt collector.~~
2. ~~Name used other than true name and inclusive dates the name is used.~~
3. ~~True physical home address and true mailing address.~~
4. ~~A copy of the record of fictitious names shall be filed with the state Banking Department on a semi-annual basis on July 1 and December 31 of each year. After the initial report is filed only changes need be reported to the Department.~~

A. A collection agency shall not allow its debt collector, agent, representative, employee, or officer to:

1. Misrepresent the person's true position with the collection agency.
2. Claim to be an attorney unless the person is licensed to practice law, or
3. Claim to be a public official, peace officer, or any other type of public employee.

B. In any communication with a debtor, a person working for a collection agency shall indicate that the person is a debt collector.

C. A collection agency shall keep a record of all fictitious names used by its debt collectors during their employment. The collection agency shall record the information required by this subsection before permitting the use of a fictitious name. The collection agency shall file a copy of the record of fictitious names with the department on July 1 and December 31 of each year. After filing the initial report, a collection agency shall identify all changes to the record on July 1 and December 31 of each year. The collection agency's record of fictitious names shall include:

1. The true name of each debt collector that uses a fictitious name,
2. Each fictitious name used by the debt collector, together with the dates when the name is used, and

3. The residential street address and residential mailing address of each debt collector that uses a fictitious name.

R20-4-1521. Duty of Investigation

~~A collection agency shall, prior to continuing its collection efforts against the debtor, investigate any claim made by the debtor or his attorney that he is the wrong party, that the debt has been paid, that the debt has been discharged in bankruptcy, or any other reasonable claim that the debt is not owing. A collection agency shall furnish evidence of the debt to the debtor or his attorney if and when so requested.~~

A collection agency shall give copies of its evidence of the debt to the debtor or the debtor's attorney on request. After providing the evidence, but before continuing its collection efforts against the debtor, the collection agency shall investigate any claim by the debtor or the debtor's attorney that:

1. The debtor has been misidentified.
2. The debt has been paid.
3. The debt has been discharged in bankruptcy, or
4. The debt is not owed for any other valid reason.